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Case Number 103,2026

IN THE

Supreme Court of the State of Delaware

ROBERTA ANN K.W. WONG LEUNG REVOCABLE TRUST U/A DATED 03/09/2018,

Plaintiff-Below, Appellant,

v.

AMAZON.COM, INC.,

Defendant-Below, Appellee.

No. 103, 2026

COURT BELOW:
COURT OF CHANCERY OF THE STATE OF DELAWARE

C.A. No. 2023-1251-BWD

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May 20, 2026

TABLE OF CONTENTS

Page

TABLE OF CITATIONS

NATURE OF PROCEEDINGS

This is an action under 8 *Del. C.* § 220 brought by a stockholder of Amazon.com, Inc. ("Amazon"). Plaintiff's stated purpose for inspection of Amazon's books and records is the investigation of mismanagement by directors and officers relating to the company's compliance with antitrust laws. After this Court reversed the Court of Chancery's initial decision that plaintiff had failed to establish a proper purpose for inspection, it remanded the case for a determination of the appropriate scope and conditions of inspection.

On remand, the Court of Chancery ordered an inspection narrower than the one plaintiff demanded and, at Amazon's request, set conditions to the inspection pursuant to its authority under § 220(c). Among those conditions was a restriction limiting plaintiff's litigation use of inspection materials to a Delaware forum. The court imposed the forum restriction after determining that the specific facts of the case warranted doing so to protect the legitimate interests of Amazon, which has received multiple stockholder demands seeking to investigate the same matters plaintiff seeks to investigate, and thus faces a concrete risk of multijurisdictional derivative litigation.

The propriety of the forum restriction is the sole issue presented for appeal.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery's order imposing a Delaware-forum restriction on plaintiff's litigation use of inspection materials was reasonable and should be affirmed. The Court of Chancery possesses broad discretion under 8 *Del. C.* § 220(c) to condition inspections of books and records to protect the legitimate interests of the corporation. That discretion includes the authority to restrict the stockholder's litigation use of inspection materials to a Delaware forum. Here, the court properly exercised its wide discretion to impose such a restriction.

The court determined, after considering the specific facts of the case, that the restriction was warranted to protect Amazon's legitimate interest in avoiding multijurisdictional derivative litigation. Those facts included Amazon's receipt of multiple stockholder demands concerning the same subject matter as plaintiff's demand, Amazon's litigation of a prior inspection action in Delaware concerning the same subject matter as plaintiff's demand, and Amazon's adoption of a forum-selection bylaw requiring all internal-affairs litigation to proceed in Delaware. Plaintiff's arguments that the court erred in considering these facts mistakes the extent of the court's discretion to consider relevant and undisputed facts. The court's imposition of the forum restriction was further supported by plaintiff's inability to identify any present need to litigate in a non-Delaware forum, and by plaintiff's ability to seek a modification of the forum restriction under Court of Chancery Rule 60(b) if a need to do so arose in the future. Plaintiff remains unable to identify any legitimate reason for litigating outside Delaware, and its arguments that Rule 60(b) relief would be inadequate to address its concerns are both forfeited and incorrect.

STATEMENT OF FACTS

A. Amazon

Amazon is a Delaware corporation. B34. Its principal executive offices are in Seattle, Washington. *Id*. One of the largest companies in the world, Amazon has more than 10 billion shares of common stock outstanding. B64. There are more than 11,000 record holders of its common stock—and many more beneficial owners. B66.

B. Plaintiff's inspection demand

In October 2023, plaintiff Roberta Ann K.W. Leung Revocable Trust U/A Dated 03/09/2018 sent Amazon a letter demanding to inspect its books and records under 8 *Del. C.* § 220. A567-91. Plaintiff's stated purpose for inspection was "to investigate potential corporate mismanagement, wrongdoing, and waste by fiduciaries of the Company," specifically its directors and officers, regarding alleged "anticompetitive practices, leading to U.S. and international regulatory scrutiny, lawsuits, and fines." A567. Plaintiff wrote that "[o]nce [it] has reviewed the requested information it will take appropriate action," but did not specify what that might be. *Id.*

Plaintiff then described several government investigations and suits into or against Amazon as the "basis for inspection." A567-84. Those proceedings included a pending suit brought by the Federal Trade Commission and others in September 2023 in federal court in Seattle, a pending suit by the California attorney general, a suit settled by consent decree brought by the Washington attorney general, and the imposition of a fine by the Italian Competition Authority subject to a pending appeal. *Id*.

Amazon responded to the demand by letter. A961-63. Amazon explained that although it believed the demand failed to establish a credible basis to suspect mismanagement, and thus a proper investigatory purpose for inspection, it was willing to discuss producing to plaintiff "a targeted set of materials," subject to "prior execution of a suitable confidentiality agreement." A962-63. Amazon proposed an agreement that imposed, among other conditions, a restriction limiting plaintiff's litigation use of the inspection materials to a Delaware forum. B55 ¶ 14.

Plaintiff responded that it was "not going to agree to an exclusive forum provision" because "there is no related action on file in Delaware and the Company has not adopted an exclusive forum provision" in its bylaws or charter. B57.

C. Initial proceedings in the Court of Chancery

Plaintiff then sued Amazon in the Court of Chancery to enforce its demand, seeking as relief an order compelling Amazon to provide for inspection all the material sought in its demand—free from a Delaware-forum restriction on its use. A592-650. In its complaint, plaintiff asserted that such a restriction "is particularly inappropriate here where Amazon has not adopted an exclusive forum bylaw or [charter] article." A595.

In a deposition under Rule 30(b)(6), plaintiff testified that its opposition to a Delaware-forum restriction hinged on Amazon's lack of a forum-selection bylaw. Asked directly "if Amazon had an exclusive forum bylaw for Delaware, would you still oppose a Delaware forum restriction in this case?", plaintiff responded: "No, I would not." B72. And when plaintiff moved for an order compelling Amazon to produce information regarding its reasons for not adopting a forum-selection bylaw, plaintiff argued that the information was relevant to its opposition to a Delaware-forum restriction because adoption of a forum-selection bylaw "would mandate the effect Amazon seeks to impose on Plaintiff's inspection here." B15-16 ¶ 21. Plaintiff's motion to compel was denied as seeking discovery inappropriate in a summary proceeding that was "(at best) marginally relevant to the narrow issues presented" and "not proportional to the needs of a summary proceeding." A17-19.

In pre-trial briefing and at trial, held on April 26, 2024 before then-Magistrate David, plaintiff asserted that Amazon's lack of a forum-selection bylaw was reason enough for the court to deny Amazon's request for a Delaware-forum restriction.[1] At trial, consistent with its deposition testimony, plaintiff argued that "if [Amazon] believes that this"—the risk of multijurisdictional derivative litigation—"is a huge problem, it can solve that by adopting an exclusive forum provision." A285. "[T]he fact that Amazon does not have an exclusive forum provision," plaintiff continued, "is a major impediment to its argument here." A286.

On May 1, 2024, then-Magistrate David issued a post-trial report concluding that plaintiff "[fell] short of establishing a credible basis to investigate wrongdoing" and recommending that judgment be entered for Amazon. A204-29. Given her

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[1] As is typical in inspection actions, the parties agreed that no evidentiary hearing was necessary and that trial would consist of the submission of a paper record and oral argument. *See* B28 ¶ IV ("The Parties have agreed that the record for this trial shall be conducted on a paper record, consisting of the exhibits cited in the Joint Exhibit List, the trial briefs, and the oral argument on April 26, 2024."); *see also* B3 ¶ 2.

conclusion that plaintiff had failed to substantiate a proper investigatory purpose, then-Magistrate David did not address whether plaintiff had carried its burden to show that each category of documents sought for inspection was necessary and essential to its stated purpose, or whether any inspection should be conditioned as Amazon had requested. *Id.*

Two days later, on May 3, Amazon publicly filed with the SEC a report on Form 8-K disclosing that, earlier that day, its Board of Directors had approved and adopted amendments to its bylaws "to provide that the Court of Chancery of the State of Delaware is the exclusive forum for certain state corporate law or shareholder derivative claims . . . to the fullest extent permitted by law and unless the Company consents in writing to the selection of an alternative forum." A1075-76. The filing attached as an exhibit a complete copy of the amended bylaws. A1078-112; *see* A1111 (Section 11, titled "Forum for Certain Actions or Proceedings").

Plaintiff filed a notice of exceptions to the post-trial report on May 6, its opening brief in support of its asserted exceptions on May 17, and its reply brief on June 7. A9-12. Plaintiff's exceptions briefing was expressly "limited to the Magistrate's Report's rulings on Plaintiff's credible basis to suspect wrongdoing and mismanagement." A398 n.115. But plaintiff noted that it "reserve[d] all rights respecting" conditions to an inspection, "including whether" they "should include an exclusive Delaware forum provision." *Id.*

The Court of Chancery overruled plaintiff's exceptions, approved the post-trial report's determination that plaintiff failed to state a proper purpose, and entered judgment for Amazon. B33-48. Given the court's determination that plaintiff had failed to state a proper purpose for inspection, the court's decision, like the post-trial report, did not address whether plaintiff had carried its burden to show that each category of documents sought for inspection was necessary and essential to its stated purpose, or whether any inspection should be conditioned as Amazon had requested. *Id.*

D. Plaintiff's prior appeal to this Court

On appeal, this Court held that, "taken together, the FTC action, the State of California action, the State of Washington consent decree, and the Italian Competition Authority fine are sufficient to establish a credible basis from which a court can infer that Amazon has engaged in possible wrongdoing through its purported anticompetitive activities." *Roberta Ann K.W. Wong Leung Revocable Tr. U/A Dated 03/09/2018* v. *Amazon.com, Inc.*, 345 A.3d 965, 981 (Del. 2025). It therefore "reverse[d] the judgment of the Court of Chancery and remand[ed] for further proceedings to determine the scope and conditions of production consistent with this decision." *Id.* at 981-82.

E. The Court of Chancery's decision determining the scope and conditions of inspection

On remand, the Court of Chancery directed the parties to file simultaneous supplemental submissions addressing any issues that remained for resolution. A4-5.

Plaintiff argued that it was entitled to all the materials it sought for inspection, as narrowed in its briefing. A552-57. With respect to a Delaware-forum restriction, plaintiff argued that "such a provision is not the 'norm,' and no case-specific factors exist which would otherwise justify the imposition of such a provision." A557. Plaintiff also argued that the court's consideration of "Amazon's post-trial adoption of an exclusive forum provision in its bylaws" would threaten "the efficiency and fairness of the judicial process" and undermine "the finality of judgments." A559-60.

Amazon opposed plaintiff's proposed scope of inspection as overbroad and requested various limitations to bring it in line with the antitrust compliance concerns plaintiff sought to investigate. A463-70. As to a Delaware-forum restriction, Amazon argued that multiple factors supported its imposition in the particular circumstances of the case, whether or not its forum-selection bylaw was considered as part of the analysis, and that plaintiff had not identified any reason why such a restriction would interfere with its ability to seek in litigation any derivative relief to which the company could be entitled. A470-77.

The Court of Chancery largely agreed with Amazon that plaintiff's proposed scope of inspection was too broad. Op. (Pl. Br. Ex. A) at 6-15. It accordingly imposed various chronological, geographic, and subject-matter limitations on the categories of documents plaintiff sought for inspection. *Id.*

The court also agreed with Amazon that it was appropriate to impose a Delaware-forum restriction on the litigation use of the inspection materials. *Id.* at 15-18. The court recognized that "whether such a provision is appropriate is 'inherently case-by-case and 'fact specific,'" but that in making that determination, it was entitled to "give weight to factors" identified as relevant in *United Technologies Corp.* v. *Treppel*, 109 A.3d 553 (Del. 2014). *Id.* at 16.

The court determined that "a Forum Restriction is appropriate under the specific facts of this case." *Id.* at 17. The court observed that "[t]o date, Amazon has received at least four demands seeking to investigate breaches of fiduciary duty based on purported anticompetitive conduct."[2] *Id.* The court found that "[t]he receipt of multiple demands seeking to investigate the same Delaware law-based claims presents a concrete risk that future derivative litigation arising from those demands may, in the absence of a Forum Restriction, span multiple forums, run up defense costs, and yield inconsistent results." *Id.* "Amazon," the court concluded, "has established that it has a legitimate interest in receiving consistent rulings from Delaware courts on fiduciary duty claims governed by Delaware law." *Id.*

The court rejected plaintiff's argument that it should disregard Amazon's forum-selection bylaw. *Id.* at 17-18. In the court's view, plaintiff had identified "no precedent compelling [it] to ignore the board's highly relevant determination that internal affairs litigation should proceed in a single Delaware forum." *Id.* at 17. As for plaintiff's invocation of the "integrity of the judicial process and the finality of judgments," the court held that those interests did not preclude its consideration of the forum-selection bylaw when it had not previously ruled on appropriate inspection conditions. *Id.* at 17-18.

Also relevant, the court determined, was Amazon's litigation of a prior inspection action brought by another stockholder also seeking to investigate

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[2] Those four demands are the June 2020 demand that was at issue in *Oklahoma Firefighters Pension & Retirement System* v. *Amazon.com, Inc.*, 2022 WL 1760618 (Del. Ch. June 1, 2022), the October 2023 demand of plaintiff here, and two demands Amazon received in September 2025. A480-98; A500-33.

breaches of fiduciary duty based on alleged anticompetitive conduct. *See Okla. Firefighters Pension & Ret. Sys.* v. *Amazon.com, Inc.*, 2022 WL 1760618 (Del. Ch. June 1, 2022). Amazon, the court recognized, "has now invested substantial resources by litigating two books and records actions in this Court arising from the same underlying conduct." Op. 18.

Lastly, the court held that plaintiff had "failed to articulate any legitimate reason why it should be permitted to file suit outside of Delaware." *Id*. The court found unpersuasive plaintiff's objection that a Delaware-forum restriction would improperly require it to "commit in advance to the ends to which it will put" the inspection materials. *Id.* The restriction, the court explained, "does not restrict *what* Plaintiff can do with the books and records, only *where* Plaintiff may bring litigation if it chooses to do so." *Id.* "Plaintiff," the court added, "offers no other reason for seeking to file litigation in another forum, nor does it explain why its ability to seek to modify any Forum Restriction under Rule 60(b) is inadequate to address its concerns." *Id.*

ARGUMENT

I. THE COURT OF CHANCERY PROPERLY IMPOSED A DELAWARE-FORUM RESTRICTION ON THE USE OF INSPECTION MATERIAL

A. Question Presented

Whether the Court of Chancery properly exercised its broad discretion under 8 *Del. C.* § 220(c) in imposing a Delaware-forum restriction on plaintiff's litigation use of inspection material. A50-58, A152-59, A470-77.

B. Scope of Review

"In a § 220 action," this Court "review[s] for abuse of discretion the Court of Chancery's determination of both the scope of relief and any limitations or conditions on that relief," a standard of review that is "highly deferential." *KT4 Partners LLC* v. *Palantir Techs. Inc.*, 203 A.3d 738, 748 (Del. 2019) (internal quotation marks omitted); *see also Hauppauge Digital, Inc.* v. *Rivest*, 300 A.3d 1270 (Del. 2023) (unpublished table decision) (exercise of the Court of Chancery's discretion to impose limitations or conditions on a § 220 inspection "will not be disturbed on appeal unless clearly unreasonable or capricious").

C. Merits of Argument

The Court of Chancery "has wide discretion to shape the breadth and use of inspections under § 220 to protect the legitimate interests of Delaware corporations." *United Techs. Corp.* v. *Treppel*, 109 A.3d 553, 559 (Del. 2014).[3] This Court accordingly held in *Treppel* that "nothing in the text of § 220 itself or Delaware case

[3] Because plaintiff's demand pre-dates the effective date of the recent amendments to § 220, the statutory text applicable here is the same statutory text considered in *Treppel*. Op. 9 n.18.

law in interpreting it limits the Court of Chancery's authority to restrict the use of material from an inspection when those interests are threatened," including by restricting any litigation use to a Delaware forum. *Id.*; *see CM & M Grp., Inc.* v. *Carroll*, 453 A.2d 788, 793 (Del. 1982) ("Counterposed to the duty to protect the rights of the stockholder, the Court has the duty to safeguard the rights and legitimate interests of the corporation.").

Here, the Court of Chancery properly exercised that broad discretion to impose a forum restriction on plaintiff's inspection. The court reasonably determined that the restriction was warranted to protect Amazon's legitimate interest in avoiding multijurisdictional derivative litigation. That determination must be upheld unless it was so unreasonable as to constitute an abuse of discretion. *See Hauppauge*, 300 A.3d 1270. There is no basis to set aside the court's determination under that standard.

1. **The Court of Chancery properly determined that a forum restriction was warranted by assessing the specific facts of this case, not by applying a "norm"**

Plaintiff argues that the Court of Chancery fundamentally erred by failing to "acknowledge or apply" the "high" standard for imposing a Delaware-forum restriction, which is not to be treated as a "norm" in setting inspection conditions. Pl. Br. 18-22.

Plaintiff is quite right that there is no "norm" in favor of a forum restriction. This Court expressly so held in *KT4 Partners LLC* v. *Palantir Technologies Inc.*, 203 A.3d 738 (Del. 2019). But emphasizing the absence of such a "norm" does nothing to undermine the Court of Chancery's analysis here—for the simple reason that the court did not rely, implicitly or explicitly, on a "norm" to justify imposing the restriction. Far from treating a forum restriction as a default to be imposed in the mine run of cases, the court undertook a careful analysis of the specific facts of *this* case to find that the restriction was warranted.

As for the "high" standard plaintiff claims the court was supposed to apply, it doesn't exist. In *Treppel*, this Court did not even once use the word "standard"—let alone admonish the Court of Chancery that a "high" threshold must be met to justify a jurisdictional use restriction. Rather, given the "breadth of . . . discretion" afforded to the Court of Chancery under § 220(c), this Court reaffirmed that the determination whether to set *any* condition or limitation on inspection is "inherently case-by-case and 'fact specific.'" *Treppel*, 109 A.3d at 558 (quoting *Espinoza* v. *Hewlett-Packard Co.*, 32 A.3d 365, 372 (Del. 2011)). Plaintiff asserts that under its imagined "high" standard, jurisdictional use restrictions are to be imposed "only sparingly" and in "outlier" cases. Pl. Br. 18-19. But those are plaintiff's words—not this Court's. Plaintiff's argument seems to be that if *KT4* rejected a "norm" in favor of jurisdictional use restrictions, it must also have adopted a "norm" against them. But nothing in *KT4* suggests that forum restrictions are generally disfavored—only that they must be justified by the specific facts of the particular case, not simply assumed to be appropriate. Indeed, in *KT4* this Court took pains to emphasize the case-specific factors favoring imposition of the restriction in *Treppel* that were absent in *KT4*. *See KT4*, 203 A.3d at 759-64.

The lesson from this Court's decisions in *Treppel* and *KT4* is that there is no presumption—for or against—when the court is evaluating the propriety of a jurisdictional use restriction. The inquiry is simply whether the specific facts and circumstances of the case at hand justify the restriction—in light of the court's duty to not only "protect the rights of the stockholder," but also "to safeguard the rights and legitimate interests of the corporation." *CM & M Grp., Inc.*, 453 A.2d at 793.

2. **The Court of Chancery reasonably assessed the specific facts of this case to conclude that a forum restriction was warranted to protect Amazon's legitimate interests**

Plaintiff contends that the circumstances of this case, unlike those in *Treppel*, do not justify a forum restriction, and the Court of Chancery abused its discretion in concluding otherwise. But the circumstances here present an even stronger justification for the restriction. And plaintiff fails to show that the court's evaluation of the relevant facts was incorrect, let alone so unreasonable as to constitute an abuse of discretion.

Stockholder demands and prior litigation. Plaintiff first argues that the court erred by considering Amazon's "receipt of multiple demands," in addition to plaintiff's, "seeking to investigate the same Delaware law-based claims." Pl. Br. 25 (quoting Op. 17). In making that argument, plaintiff does not contest the reasonableness of the court's finding that those demands "present[] a concrete risk that future derivative litigation arising from those demands may, in the absence of a Forum Restriction, span multiple forums, run up defense costs, and yield inconsistent results." Op. 17. Plaintiff instead argues that the court "misappl[ied]" the "case-specific" factors identified in *Treppel* because those factors referred only to United Technologies' litigation of a prior related derivative suit in Delaware, not to its receipt of duplicative inspection demands. Pl. Br. 25-27. In plaintiff's view, *Treppel* therefore did not authorize the court to consider the demands here. Pl. Br. 26-27. Plaintiff likewise argues that the court was wrong to consider the resources Amazon has invested in litigating in Delaware courts not only this action, but also a prior inspection action arising from one of the duplicative demands. Pl. Br. 35-36. According to plaintiff, that "investment" is distinguishable from the one recognized as relevant in *Treppel* because there the prior action was a derivative action, not an inspection action. Pl. Br. 26-27, 35-36.

Plaintiff mistakes the extent of the Court of Chancery's discretion to identify and weigh case-specific factors that reasonably support a forum restriction in any particular case. Nothing in *Treppel* suggests that a jurisdictional use restriction may be properly ordered only if the corporation can establish exact factual parallels between its situation and that of United Technologies. Yet plaintiff treats the "case-specific" factors identified in *Treppel* as independent requirements that must be satisfied—separate boxes that must be checked—to justify a forum restriction in every case. But those "case-specific factors" were just that—factors specific to the *Treppel* case. As *Treppel* itself made clear, those "case-specific" factors could be "appropriately . . . considered" by the Court of Chancery "because they involve a legitimate concern on United Technologies' part that it and its stockholders could face excessive costs and the risk of inconsistent rulings if Treppel were to file suit elsewhere." 109 A.3d at 560; *see also KT4*, 203 A.3d at 760 (reiterating that rationale for the relevance of the factors).

Here, the Court of Chancery was entitled to consider the multiple demands Amazon had received for the same reason: The demands substantiated Amazon's "legitimate concern . . . that it and its stockholders could face excessive costs and the risk of inconsistent rulings if [plaintiff] were to file suit" outside Delaware. *Treppel*, 109 A.3d at 560. That evidence of the risk of multijurisdictional derivative litigation was even more compelling than the evidence presented in *Treppel*, where the company could point to only the possibility of competing demands and derivative suits in the future. *Id.* And that evidence easily supported the court's conclusion that Amazon had "established . . . a legitimate interest in receiving consistent rulings from Delaware courts on fiduciary duty claims governed by Delaware law." Op. 17.

The court was likewise entitled to consider the resources Amazon has already expended in defending a related inspection action in Delaware. *See Okla. Firefighters Pension & Ret. Sys.* v. *Amazon.com, Inc.*, 2022 WL 1760618 (Del. Ch. June 1, 2022). Amazon has a legitimate interest in reducing the cost of defending related derivative litigation—and litigation efficiency is served by channeling such litigation not only to the single forum whose law governs the derivative claims at issue, but to the forum with the most experience in adjudicating the corporate law issues pertaining to those derivative claims.

Plaintiff counters that the forum most experienced in litigation relevant to its demand is the federal district court in Seattle, where a suit by the FTC and multiple state attorneys general against Amazon is pending. Pl. Br. 28-29. That action may be related to plaintiff's demand in the sense that it provides the primary premise for plaintiff's suspicions of fiduciary breach. But it is not related in the sense that lawyers and courts usually mean when identifying cases that can be efficiently paired for case management and adjudication. The claims in the FTC suit arise under federal and state antitrust law, and are asserted by government regulators against Amazon. A789-960. By contrast, the claims plaintiff seeks to investigate arise under Delaware corporate law, and would be asserted by an Amazon stockholder, on behalf of Amazon, against Amazon's officers and directors. A567, A583-84. Since the parties, legal principles, and relevant facts are all different, it is hardly plausible that the district court in Washington and the U.S. Court of Appeals for the Ninth Circuit would be in a position to deal more efficiently with plaintiff's potential Delaware-law claims than the Court of Chancery and this Court.

Plaintiff asserts that the pendency of the FTC suit renders this case "akin to" *KT4 Partners LLC* v. *Palantir Technologies Inc*, 203 A.3d 738 (Del. 2019). But the facts of *KT4* were wildly different from those here. By the time of the inspection action in *KT4*, the parties were already embroiled in litigation in California—initiated by the corporation, no less—and the stockholder sought to investigate "not only fiduciary duty claims," but also "contractual claims" governed by California law. *Id.* at 762-63. To all that, add that the corporation was a "private company with a discrete set of investors" and so "less likely than a public company to face the potential for multiforum class or derivative actions." *Id*. at 762. Indeed, the corporation did "not . . . identify any investors other than [the plaintiff] who . . . threatened" to file related litigation. *Id*.

Here, by contrast, there is no pre-existing litigation involving Amazon and plaintiff, the only claims plaintiff seeks to investigate are derivative claims governed by Delaware law, and Amazon is a public company with many thousands of stockholders that has already received demands from three other stockholders seeking to investigate the same claims. The Court of Chancery correctly concluded that, in the circumstances here, allowing plaintiff to litigate outside Delaware, including in federal court in Seattle, would risk excessive defense costs and inconsistent results. Op. 17.

Amazon's forum-selection bylaw. Plaintiff argues that the Court of Chancery could not consider Amazon's adoption of a forum-selection bylaw for the sole reason that it occurred "post-trial." Pl. Br. 31-35. Plaintiff does not dispute that the bylaw represented the Amazon board's determination that internal affairs litigation should proceed only in Delaware, and that the bylaw was therefore relevant to Amazon's legitimate concern to avoid multijurisdictional derivative litigation. *See Treppel*, 109 A.3d at 560. Nor does plaintiff dispute that the bylaw was validly adopted and would apply to any derivative suit arising from its demand. Rather, plaintiff's objection is simply that, given the timing of the bylaw's adoption, interests of judicial "efficiency and fairness" precluded the court from weighing it in its analysis. Pl. Br. 32-35.

To begin with, plaintiff is ill-situated to claim any unfairness in the timing of the bylaw's adoption, given its own litigation positions. Plaintiff alleged in its complaint that Amazon's insistence on a forum restriction was "particularly inappropriate" because Amazon had not adopted a forum-selection bylaw, A595, testified under oath that it would no longer oppose a forum restriction if Amazon adopted a forum-selection bylaw, B72, and argued at trial that Amazon could "solve" the problem of multijurisdictional derivative litigation "by adopting an exclusive forum provision" in its bylaws, A285-86. Plaintiff may now regret being taken at its word. But if any party has been inconsistent in its litigation positions, it is plaintiff, not Amazon.

Plaintiff invokes *Tornetta* v. *Musk*, 326 A.3d 1203 (Del. Ch. 2024), *rev'd sub nom., In re Tesla, Inc. Derivative Litigation*, 351 A.3d 1005 (Del. 2025), as authority supposedly requiring the court to ignore Amazon's adoption of the bylaw. Pl. Br. 31-34. But Amazon's conduct here is not comparable to the defendants' conduct there. In *Tornetta*, as plaintiff says, defendants sought to "flip[] the outcome of an adverse post-trial decision based on evidence they created after trial." Pl. Br. 32 (quoting *Tornetta*, 326 A.3d at 1212-13). That is not remotely what Amazon did—or tried to do—here. When Amazon adopted the bylaw, no post-trial decision had been rendered. Only then-Magistrate David's report recommending a decision had been issued. And that report did not reach, let alone resolve, the parties' dispute over the propriety of a forum restriction. Nor did the court's decision adopting the report's recommendation to enter judgment for Amazon.

By the time the Court of Chancery was required to address the propriety of a forum restriction, more than eighteen months had passed—during which time plaintiff successfully appealed the court's initial decision, and this Court remanded the case for a determination of the scope and conditions of inspection. At that point, if plaintiff believed that it needed to supplement the record to adequately oppose a forum restriction, it could have sought to do so. But plaintiff did not do that. Instead, it simply argued in its supplemental post-appeal briefing that *Tornetta* precluded the court's consideration of the bylaw. A559-60.

What is inefficient is not what the Court of Chancery did, but what plaintiff argues it should have done: blinded itself to Amazon's adoption of a forum-selection bylaw in May 2024 when it was assessing the propriety of a forum restriction in November 2025, even though plaintiff disputed neither the fact of the bylaw's adoption nor its validity. For good reason, the law does not compel that result. As a matter of both efficiency and fairness, Delaware courts may "take judicial notice" of "a fact that is not subject to reasonable dispute" at "any stage of the proceeding." Del. R. Evid. 201(b), (d). And Delaware courts are entitled to consider post-trial evidence before entry of a final judgment when doing so would "serve the interests of justice." *Lola Cars Int'l Ltd.* v. *Krohn Racing, LLC*, 2010 WL 1818907, at *3 (Del. Ch. Apr. 23, 2010).

Treppel itself confirms that the timing of the bylaw's adoption was no bar to its consideration by the Court of Chancery. There too, as this Court recognized, the corporation adopted its forum-selection bylaw "while [the stockholder's] suit was pending." *Treppel*, 109 A.3d at 556. Yet this Court made clear that the Court of Chancery was entitled to consider the bylaw—a "fact . . . not subject to reasonable dispute"—as a factor weighing in favor of a forum restriction. Del. R. Evid. 201(b); *see Treppel*, 109 A.3d at 560. The Court of Chancery was thus entirely within its discretion to consider the "highly relevant" fact of Amazon's forum-selection bylaw, notwithstanding its adoption during the pendency of this suit. Op. 17.[4]

[4] Contrary to plaintiff's suggestion, Pl. Br. 28, the court was likewise entitled to consider the two inspection demands Amazon received in September 2025. A480-98; A500-33.

Lack of legitimate reasons to sue elsewhere. Plaintiff contends that the Court of Chancery was also wrong to consider plaintiff's "fail[ure] to articulate any legitimate reason why it should be permitted to file suit outside of Delaware." Pl. Br. 36 (quoting Op. 18). According to plaintiff, a requirement that it articulate such a reason is contrary to the principle that a stockholder seeking an investigatory inspection need not "commit in advance to the ends to which it will put the books and records." Pl. Br. 37 (quoting *Leadwell Glob., Ltd.* v. *Leadwell Glob. Prop. LLC*, C.A. No. 2022-0440-JTL (Del. Ch. Sept. 19, 2022) (Letter to Counsel)).

But *Treppel* expressly held that the Court of Chancery was entitled "to give weight to" the stockholder's "inability to articulate" such a reason. 109 A.3d at 560. And as the Court of Chancery correctly observed in its decision here, a forum restriction does not "commit" plaintiff to bring or not bring a suit; it simply restricts where plaintiff can pursue litigation using the inspection materials. Op. 18. Of course, any restriction on the use of inspection material will necessarily constrain, in some sense, the "ends" the stockholder may use the material to pursue. To state the obvious, a Delaware-forum restriction bars litigation outside Delaware as one "end" to which the stockholder can put the inspection material it obtains. But that truism does not make use restrictions in general, or forum restrictions in particular, impermissible. Plaintiff's contrary argument is irreconcilable with the plain language of § 220(c) and the holding of *Treppel*. As for plaintiff's reliance on *Leadwell*, that decision lends no support to its opposition to a forum restriction here. *Leadwell* did not even concern a forum restriction. It rejected a restriction narrowly limiting the plaintiff's use of inspection material to assessing the value of the corporation and the performance of its management.

Plaintiff argues, in the alternative, that even if it was properly required to articulate legitimate reasons to sue elsewhere, it did so. Pl. Br. 37-39. But while plaintiff proffered three reasons it might want to sue elsewhere, it did not show that any of them were legitimate.

Plaintiff asserts that it "may" want to pursue derivative claims carrying a right to a jury trial—unavailable in the Court of Chancery. Pl. Br. 38. But the potential claims plaintiff seeks to investigate through its demand are derivative claims on behalf of a Delaware corporation, arising under Delaware law. Plaintiff offers zero authority for the notion that derivative claims governed by Delaware law could carry a procedural right unavailable under Delaware law. And plaintiff does not dispute the Court of Chancery's authority to order any derivative relief to which Amazon may be entitled under Delaware law.

Plaintiff next asserts that it "may" want to sue individuals not subject to personal jurisdiction in Delaware. Pl. Br. 38. That justification is entirely hypothetical. Plaintiff's own demand states that plaintiff is seeking to investigate potential "corporate mismanagement, wrongdoing, and waste" by "fiduciaries of the Company," specifically its directors and executive officers. A567. Under 10 *Del. C.* § 3114, non-resident directors and officers of a Delaware corporation are deemed to consent to personal jurisdiction in the Delaware courts for suits against them in their capacity as directors and officers. Plaintiff does not even attempt to identify any individual who might be the proper subject of a derivative claim on behalf of Amazon who would not be subject to personal jurisdiction in Delaware.

Finally, plaintiff asserts that it "may also need to intervene in related derivative action[s] occurring outside of Delaware" to protect against "issue preclusion risk." Pl. Br. 38, 41-43. But plaintiff does not identify any pending related derivative actions outside Delaware because none exist. And plaintiff does not contest that any future derivative actions, whether brought by plaintiff or another Amazon stockholder, will be subject to Amazon's forum-selection bylaw. Plaintiff's need to intervene in a non-Delaware action—now or in the future—is utterly speculative.

For that reason, plaintiff's reliance on *Silberberg* v. *Acacia Communications, Inc.*, is misplaced. C.A. No. 2018-0262-TMR (Del. Ch. May 29, 2018) (TRANSCRIPT). There, the stockholder opposing a Delaware-forum restriction identified related derivative actions pending in Massachusetts federal court that had been filed by plaintiffs who had "agreed to forego the use of 220 documents." *Id.* at 7:3-19. Given that fact, the Court of Chancery rejected the requested forum restriction, reasoning that imposing it "could prevent the best possible derivative allegations on demand futility from being presented to the Massachusetts court." *Id.* at 50:5-24.

Because plaintiff here did not identify any legitimate reason for filing suit outside Delaware in the present circumstances, the court properly gave weight to plaintiff's "ability to seek a modification of the use restriction under Court of Chancery Rule 60(b) if specific circumstances arise that generate such a need."

Treppel, 109 A.3d at 560. As the court noted, plaintiff did not explain why the ability to seek relief under Rule 60(b) "is inadequate to address its concerns." Op. 18.

Plaintiff now contends that the possibility of Rule 60(b) relief is "at odds with the summary nature of § 220 proceedings" and "contrary to this Court's jurisprudence." Pl. Br. 42. And so, plaintiff says, the court erred by not ordering exceptions to the forum restriction allowing plaintiff to sue elsewhere if plaintiff determines that doing so is necessary either to intervene in related litigation or to bring claims over which the Court of Chancery lacks subject matter or personal jurisdiction. Pl. Br. 43-45. But plaintiff never even mentioned Rule 60(b) in any of its briefing below—let alone argued that Rule 60(b) was inadequate to address its concerns. Nor did plaintiff argue that if the court imposed a forum restriction, it should be subject to the exceptions plaintiff now advocates. Plaintiff is not permitted to make those arguments for the first time on appeal. Del. Sup. Ct. R. 8.

In any event, plaintiff's belated arguments are easily dispatched. *Treppel* itself made clear that the possibility of Rule 60(b) relief is a factor supporting the initial institution of a forum restriction without any exceptions. 109 A.3d at 560. Nor does plaintiff offer a good reason for subjecting the forum restriction to exceptions it can unilaterally invoke. The Court of Chancery—not plaintiff alone—is best positioned to determine whether it lacks jurisdiction over potential claims or defendants, or whether intervention in another forum is necessary to protect against "issue preclusion risk." *See* Pls.' Br. 43. And unlike the plaintiff in *KT4*, plaintiff here has not identified any plausible scenario in which potential defendants of the claims it is seeking to investigate would not be subject to personal jurisdiction in Delaware.

In sum, the court's imposition of a forum restriction protected Amazon's legitimate interest in avoiding the needless cost and risk of multijurisdictional derivative litigation, without impairing plaintiff's ability to obtain any derivative relief to which Amazon is entitled. The Court's exercise of its discretion was thus not an abuse, but fair and eminently reasonable.

CONCLUSION

The judgment of the Court of Chancery should be affirmed.

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