

## Delaware Supreme Court Asserts No Presumption of Confidentiality for Books-and-Records Productions Under Section 220

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### Delaware Law Update

09.16.2019

In *Tiger v. Boast Apparel, Inc. (a/k/a BAI Capital Holdings, Inc.)*, the Delaware Supreme Court held that there is no presumption of confidentiality for books-and-records inspection requests under Section 220 of the Delaware General Corporation Law (DGCL), making it clear that stockholders do not need to demonstrate urgent circumstances to grant certain restrictions.

Section 220 of the DGCL provides the means by which a stockholder of a Delaware corporation can make a demand for the books and records of a Delaware corporation. The Delaware Supreme Court recognized that the Court of Chancery may—and typically does—condition Section 220 inspections on the entry of a reasonable confidentiality order. However, the Delaware Supreme Court noted that such inspections are not subject to a presumption of confidentiality; rather, the Delaware Supreme Court recognizes and instructs the Court of Chancery to weigh the stockholder's legitimate interests in free communication against the corporation's legitimate interests in confidentiality.

The Supreme Court asserted that no presumption exists under Delaware law that corporate books and records inspected by a stockholder will be entitled to confidentiality restrictions, and that a stockholder does not need to demonstrate urgent circumstances for the court to grant such restrictions for a time period shorter than indefinite confidentiality. The Supreme Court also held that if the Chancery Court enters a confidentiality order, the duration of the order does not depend on the shareholder's ability to demonstrate exigent circumstance. Stockholders and corporations should carefully consider whether they need to execute a confidentiality agreement for Section 220 inspections.