

The Supreme Court of The State of Delaware Clarifies That Productions of Records to Stockholders Under Section 220 Are Not Subject to a Presumption of Confidentiality

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On August 7, 2019, in *Tiger v. Boast Apparel, Inc.*, the Supreme Court of the State of Delaware affirmed the Court of Chancery's order and final judgment relating to a confidentiality order for books and records produced to a stockholder under Section 220 of the Delaware General Corporation Law. Although the Delaware Supreme Court affirmed the Court of Chancery's order and final judgment on the grounds that the lower court did not abuse its discretion, the Delaware Supreme Court held that while Section 220 inspections *may be* conditioned on the entry by the parties "of a reasonable confidentiality order, such inspections are not subject to a *presumption* of confidentiality." The Court found that a confidentiality order's "temporal duration is not dependent on a showing of the absence of *exigent circumstances* by the stockholder." The Court explained that the Court of Chancery should conduct a balancing test of the "stockholder's legitimate interests in free communication against the corporation's legitimate interests in confidentiality" in determining the scope of confidentiality and temporal duration of the limitation in a Section 220 production.

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