Blogs
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Public Chatter

How to Handle a Director’s Right to Corporate Information If Interests Diverge

On occasion, I'll get asked, "Does a director of a Delaware corporation have an 'unfettered right' to access corporate information?" This question typically arises in a variety of uncomfortable circumstances, such as the director in question being investigated - or perhaps a possible conflict of interest involving that director. It can also happen in highly cooperative situations – as when a board candidate will say "Look, I'd be happy to join your board, but only if you'd be able to screen me from information that relates to your XYZ business line, which competes with one of our businesses. Can we put that in writing so that I could run it by my general counsel?" These often are not easy situations to provide counsel. In the more uncomfortable example, feelings might get hurt. There could be a divergence of views from parties that are supposed to be working together. To be collegial. Of course, the other members of the board might not be too worried about feelings if a director is being investigated by one of the board committees. But in this type of scenario, things clearly might get contentious and it's important to do things by the book. I'll have a follow-up blog about how to handle things by the book...

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