

## IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SPENCER L. MURFEY, III, as :  
 Co-Trustee for the Trust for the :  
 Benefit of Spencer L. Murfey, III, :  
 under the Power of Appointment Trust :  
 of Spencer L. Murfey, Jr., u/a/d :  
 August 1, 2002, and CYNTHIA H. MURFEY :  
 as Co-Trustee for the Trust for the :  
 Benefit of Cynthia H. Murfey, under :  
 the Power of Appointment Trust of :  
 Spencer L. Murfey, Jr., u/a/d August :  
 1, 2002, :

Plaintiffs, :

v. :

C.A. No. :  
 2018-0652-MTZ :

WHC VENTURES, LLC, a Delaware :  
 limited liability company, WHC :  
 VENTURE 2009-1, L.P., a Delaware :  
 limited partnership, WHC VENTURES :  
 2013, L.P., a Delaware limited :  
 partnership, and WHC VENTURES 2016, :  
 L.P., a Delaware limited partnership, :

Defendants. :

- - -  
 Chambers  
 Leonard L. Williams Justice Center  
 500 North King Street  
 Wilmington, Delaware  
 Friday, June 21, 2019  
 3:36 p.m.

- - -  
 BEFORE HON. MORGAN T. ZURN, Vice Chancellor  
 - - -

THE COURT'S BENCH RULING RE PLAINTIFFS' REQUEST FOR  
BOOKS AND RECORDS

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 CHANCERY COURT REPORTERS  
 Leonard L. Williams Justice Center  
 500 North King Street  
 Wilmington, Delaware 19801  
 (302) 255-0521

1 APPEARANCES: (via telephone)

2 CARL D. NEFF, ESQ.  
3 E. CHANEY HALL, ESQ.  
4 Fox Rothschild LLP  
5 for Plaintiffs

6 RAYMOND J. DICAMILLO, ESQ.  
7 BRIAN F. MORRIS, ESQ.  
8 SHANNON NAKAMOTO, ESQ.  
9 Richards, Layton & Finger, P.A.  
10 for Defendants

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1 THE COURT: Good afternoon, counsel.  
2 This is Morgan Zurn.

3 May I have appearances, please?

4 MR. NEFF: Good afternoon, Your Honor.  
5 Carl Neff and Chaney Hall from Fox Rothschild on  
6 behalf of the plaintiffs.

7 THE COURT: Good afternoon.

8 MR. DICAMILLO: Good afternoon, Your  
9 Honor. Ray DiCamillo for the defendants. Also on  
10 with me are Brian Morris and Shannon Nakamoto.

11 THE COURT: Thank you.

12 And Mr. Tumulty has not joined us?

13 MR. DICAMILLO: I do not believe so.

14 THE COURT: All right. Thank you.

15 Thanks for getting on the line.  
16 Hopefully you're all headed to the beach once we're  
17 done here.

18 This is my post-trial ruling for  
19 plaintiffs' request for books and records under  
20 Section 17-305 of our Revised Uniform Limited  
21 Partnership Act. The defendants are the limited  
22 partnerships from whom the books and records are  
23 requested. For reasons I will explain, the  
24 plaintiffs' request is denied.

1           The relevant facts are as follows:  
2 Spencer L. Murfey, III, is a co-trustee for and a  
3 beneficiary of the Trust for the Benefit of Spencer L.  
4 Murfey, III, under the Power of Appointment Trust of  
5 Spencer L. Murfey, Jr., u/a/d August 1, 2002.

6           Cynthia H. Murfey is a co-trustee for  
7 and beneficiary of the Trust for the Benefit of  
8 Cynthia H. Murfey, under the Power of Appointment  
9 Trust of Spencer L. Murfey, Jr., u/a/d August 1, 2002.  
10 I will call those two together the "Trusts."

11           Mr. and Ms. Murfey have served as  
12 co-trustees of their respective Trusts since 2015.  
13 Others served in that role before that time, including  
14 Homer Chisholm, who has served as the co-trustee of  
15 each of the Trusts since June 15, 2007.

16           The Trusts are limited partners of  
17 each of the defendant partnerships. The trustees  
18 executed and delivered subscription applications for  
19 investment interests in WHC 2009, one of the  
20 defendants. The 2009 application committed \$500,000  
21 on behalf of each of the Trusts.

22           In 2011, Chisholm informed plaintiffs  
23 of an opportunity to increase the Trusts' investments  
24 in WHC 2009, which this opportunity was presented to

1 all limited partners. Plaintiff directed Mr. Chisholm  
2 to increase the Trusts' investments, and the trustees  
3 subsequently executed and delivered amendments to the  
4 2009 applications dated February 10, 2011. This  
5 increased each of the Trusts' capital commitments to  
6 \$665,000.

7           There was a second potential  
8 commitment in 2011. As I will explain, the  
9 then-trustees did not commit additional capital in the  
10 second round. As a result, the plaintiffs experienced  
11 some dilution when other limited partners participated  
12 in the second round.

13           The trustees invested in the WHC 2013  
14 and WHC 2016 partnerships as well, but the details of  
15 those investments are not relevant to this decision.

16           WHC Ventures, LLC, is the general  
17 partner of the partnerships and a Delaware limited  
18 liability company. Peter Nordell, Jr., is the  
19 managing member of the general partner. The  
20 partnerships are, and have been at all times relevant  
21 to plaintiffs' allegations, formed under the laws of  
22 Delaware. And substantially all of the limited  
23 partners of the partnerships, including plaintiffs'  
24 Trusts, are trusts for the benefit of members, or

1 entities owned by or for the benefit of members, of  
2 either the Murfey or Corning families, which are  
3 different branches of an extended family.

4           The Murfey and Corning families have  
5 been investing with Greylock Partners since 1965. The  
6 Trusts each respectively own an approximate  
7 1.183 percent interest in WHC Ventures 2009. The  
8 Trusts each respectively own an approximate 1.178  
9 percent interest in WHC Ventures 2013. And the Trusts  
10 each respectively own an approximate 1.178 percent  
11 interest in WHC Ventures 2016.

12           The only entities in which the Trusts  
13 invest and which are run by the general partner are  
14 the partnerships. Each of the Trusts receives a K-1  
15 from the partnerships each year. The partnership  
16 agreements contain a right to inspect the partnerships  
17 books and records, which is as follows:

18           "Each Limited Partner has the right,  
19 on reasonable request and subject to whatever  
20 reasonable standards as the General Partner may from  
21 time to time establish (including standards for  
22 determining whether the purpose for the request is  
23 reasonably related to the Limited Partner's Interest  
24 as a Limited Partner), to obtain from the General

1 Partner for purposes reasonably related to the Limited  
2 Partner's Interest as a Limited Partner the  
3 information set forth above in Section 12.1 as well as  
4 information regarding the status of the business and  
5 financial condition of the Partnership (generally  
6 consisting of the Partnership's financial statements)  
7 and whatever other information regarding the affairs  
8 of the Partnership as is just and reasonable in light  
9 of the purpose related to the Limited Partner's  
10 Interest as a Limited Partner for which the  
11 information is sought .... Despite anything to the  
12 contrary in this Agreement or in the Act, Limited  
13 Partners will not be entitled to inspect or receive  
14 copies of the following ... (c), trade secrets of the  
15 Partnership or the General Partner, investor  
16 information, financial statements of Limited Partners  
17 or similar materials, documents and correspondence."

18 This language appears in Section  
19 12.2.1 of the 2009, 2013, and 2016 partnership  
20 agreements at JX 2, 5 and 8. The reference to Section  
21 12.1 refers to the agreements' section on books and  
22 records, which reads as follows:

23 "Books and records of the Partnership  
24 will be maintained at the principal office of the

1 Partnership or at whatever other office of the  
2 Partnership as may be designated by the General  
3 Partner, and will be available for examination by any  
4 Partner or that Partner's duly authorized  
5 representatives at any reasonable time. The  
6 Partnership will maintain the following books and  
7 records.

8 "12.1.1. A current list of the full  
9 name and last known business or residence address of  
10 each Partner, together with the Capital Contributions  
11 and Partnership Percentage of each of those Partners;  
12 12.1.3. Copies of the Partnership's federal, state  
13 and local income tax or information returns and  
14 reports, if any, for the six most recent taxable  
15 years."

16 Those background facts set the table  
17 for the parties' books and records dispute. On  
18 January 10, 2018, plaintiffs served the general  
19 partner with a demand pursuant to Section 17-305 and  
20 the partnership agreement for the inspection of  
21 certain books and records of the partnerships. I will  
22 call this the "Demand Letter."

23 The Demand Letter listed two purposes.  
24 The first was valuing plaintiffs' interests in the

1 partnerships. This was related to losses in certain  
2 tax years, and plaintiffs claimed to want "to  
3 determine whether and to what extent the Trusts'  
4 interest should be sold, assigned, exchanged or  
5 otherwise transferred."

6 Second, they sought to analyze the  
7 ownership structures of each of the partnerships  
8 because they had recently learned of what they called  
9 "an unexplained diminution of their respective  
10 ownership interests in entities that invest in various  
11 funds managed by Greylock Partners."

12 In short, the Trusts' ownership  
13 percentage was higher the earlier the partnership was  
14 formed. For example, the Trusts held a 7.35 percent  
15 interest in a company formed in 2000, but only about  
16 1.1 percent for companies formed in 2009 and 2013.

17 The plaintiffs sought documentation  
18 "to explain this diminution, and to determine whether  
19 certain other Corning or Murfey family trusts have  
20 been unjustly enriched at the expense of the Trusts."

21 After the general partner's counsel  
22 responded to the Demand Letter, plaintiffs and the  
23 general partner entered into a confidentiality and  
24 nondisclosure agreement governing the inspection of

1 books and records, or the "Confidentiality Agreement,"  
2 on April 13, 2018, which is in the record as JX 32.

3 Pursuant to the Confidentiality  
4 Agreement, the general partner agreed to make certain  
5 information and documents available for inspection in  
6 response to the Demand Letter. This production  
7 sufficiently addressed nearly all of plaintiffs'  
8 requests. The current dispute centers on one narrow  
9 set of documents that was not produced: the K-1s of  
10 other limited partners.

11 On July 31, 2008, Richard Szekelyi of  
12 Phoenix Management Services, on behalf of plaintiffs,  
13 conducted an in-person inspection of certain of the  
14 partnerships' books and records at the office of the  
15 general partner in Cleveland, Ohio. During the  
16 inspection, the K-1s were made available to  
17 Mr. Szekelyi to review with Mr. Nordell but not copy.  
18 Mr. Szekelyi was not permitted to make or retain  
19 copies of the K-1s.

20 Defendants subsequently agreed to make  
21 copies of the K-1s available to Mr. Szekelyi and to  
22 plaintiffs' counsel on the condition that the K-1s  
23 would be produced under a professionals'-eyes-only  
24 designation. Plaintiffs reserved their right to

1 pursue greater access to the documents.

2           The parties' dispute culminated in  
3 this action when, on September 4, 2018, plaintiffs  
4 filed the verified complaint. On November 19, 2018,  
5 plaintiffs executed Amendment No. 1 to the  
6 Confidentiality Agreement, which allowed plaintiffs'  
7 counsel and Mr. Szekelyi to obtain and possess copies  
8 of the K-1 forms on certain terms and conditions.  
9 That is JX 33. Subsequently, plaintiffs' counsel and  
10 Mr. Szekelyi executed undertakings in connection with  
11 Amendment No. 1 and received copies of the K-1 forms  
12 from defendants.

13           I held trial on February 6, 2019, and  
14 the parties filed a joint schedule of evidence on  
15 March 20, 2019.

16           The remaining issues are whether  
17 plaintiffs may obtain copies of the K-1 forms and  
18 whether plaintiffs' advisors can consult with  
19 plaintiffs concerning information in the K-1s. In  
20 short, I conclude that plaintiffs have no right to the  
21 K-1s or the information they contain.

22           In *Madison Avenue Investment Partners*  
23 *versus American First Real Estate Investment Partners*,  
24 this Court stated that a limited partner must meet

1 three requirements to prevail on a books and records  
2 demand. The first two are laid out in Section  
3 17-305(e). The demand must follow the form and manner  
4 of making demand. This is not an issue in this case.

5 Next, the demand must be reasonable  
6 and for a purpose reasonably related to the limited  
7 partner's interest as a limited partner. This  
8 requirement includes two components for the purposes  
9 the plaintiffs advance here. The party requesting  
10 records must show the documents are "necessary and  
11 essential" to accomplishing that purpose.

12 And to investigate potential  
13 wrongdoing, the party requesting the books and records  
14 must show "a credible basis from which the Court can  
15 infer that mismanagement, waste or wrongdoing may have  
16 occurred." That's from *Seinfeld versus Verizon*  
17 *Communications*.

18 These requirements are where all the  
19 action is in this case.

20 Finally, the inspection right is  
21 subject to such reasonable standards "as may be set  
22 forth in the partnership agreement or otherwise  
23 established by the general partners." That last part  
24 is a quote from Section 17-305(a). This is also not

1 an issue here because the parties provided no  
2 standards established by the general partner that  
3 pertain to the analysis here.

4           First, turning to proper purpose. The  
5 partnership agreements include language similar to the  
6 language of 17-305, allowing the limited partner to  
7 request certain information "for purposes reasonably  
8 related to the Limited Partner's interest."

9           As summarized from their Demand  
10 Letter, plaintiffs assert two purposes. The first is  
11 valuing their shares. They asked for a number of  
12 documents, including documents already turned over,  
13 like the partnership tax returns, the Trusts' Schedule  
14 K-1s, and annual valuations.

15           The second purpose is investigating  
16 the propriety of the plaintiffs' respective ownership  
17 interests in the partnerships. Plaintiffs claim they  
18 will be able to understand who benefited from the  
19 diminution of their interests, and in what amounts, if  
20 they receive the K-1s.

21           I must focus on plaintiffs' primary  
22 purpose, and I can discount any secondary purposes  
23 under *Norfolk City Retirement Systems versus Jos. A.*  
24 *Bank.*

1           On the record before me, I cannot  
2 conclude their primary purpose is something other than  
3 valuing their shares or investigating the alleged  
4 wrongful dilution. Those are proper purposes under  
5 our law.

6           It is tempting to look only at the  
7 narrow nature of the remaining dispute and conclude  
8 that plaintiffs do not have a proper purpose for  
9 requesting copies of the K-1s, which is what  
10 defendants argue I should do. But the plaintiffs  
11 requested other documents as well, and those  
12 documents, which defendants provided, fit more neatly  
13 within the stated purposes. With that context and  
14 viewing the request as a whole, in the absence of  
15 evidence showing an improper actual purpose, I  
16 conclude that plaintiffs have stated proper purposes  
17 of valuing their shares and investigating wrongdoing.

18           I will next focus on plaintiffs'  
19 desire to investigate potential wrongdoing. As stated  
20 earlier from our Supreme Court's *Seinfeld* decision, to  
21 prove that the stated purpose is justified, the  
22 stockholder must demonstrate, by a preponderance of  
23 the evidence, "a credible basis from which the court  
24 can infer that mismanagement, waste or wrongdoing may

1 have occurred."

2           The "credible basis" standard is the  
3 lowest burden of proof known in our law. It only  
4 requires that the plaintiff present "some evidence" of  
5 wrongdoing. Even with this low standard, however,  
6 plaintiffs fail to satisfy their burden.

7           The plaintiffs allege the following:

8           "The Murfeys received no notice of the  
9 admission of the new limited partners, and only once  
10 received an offer to increase investments in WHC 2009  
11 (in 2011). If the Murfeys had been provided further  
12 opportunities to increase the Trusts' investments,  
13 they would have done so." Citing the Spencer  
14 deposition at JX 30. "Indeed, the Trusts were subject  
15 to the Murfeys' standing orders to increase any  
16 Greylock holdings whenever possible. For reasons  
17 unknown to the Murfeys, their directions were not  
18 followed. Plaintiffs are entitled to investigate why  
19 they were not treated equally to their fellow limited  
20 partners."

21           Plaintiffs have failed to demonstrate  
22 a credible basis to suspect wrongdoing in the  
23 admission of new limited partners. At trial, at page  
24 128 of the transcript, plaintiffs' counsel stated, "it

1 was done in a way to not affect the ownership  
2 interests of the Murfeys."

3           And Section 2.3.2 of the partnership  
4 agreements provide multiple means of admitting new  
5 limited partners. Plaintiffs have given me no  
6 standards or evidence from which to infer that the  
7 proper ways of adding new limited partners were  
8 ignored, that plaintiffs had a right to receive notice  
9 that was violated, or that any other obligation or  
10 standard of conduct was breached when the new limited  
11 partners were admitted.

12           Plaintiffs have also failed to  
13 establish a credible basis for suspecting wrongdoing  
14 in the context of missing an opportunity to increase  
15 investments in the WHC 2009 partnership. The only  
16 evidence of decreased ownership in the record relates  
17 to the 2011 opportunity.

18           First, plaintiffs' theory depends on  
19 an assumption that they have a right to own the same  
20 percentage in every investment vehicle and that  
21 something suspect has occurred because the amount they  
22 own in successive entities has decreased.

23           Plaintiffs assert they seek to  
24 remediate such wrongdoing by suing fellow limited

1 partners who have increased their percentages of  
2 ownership under a theory of unjust enrichment, but  
3 that they need the identities of the other limited  
4 partners to do so in order to avoid suing their mother  
5 or sister.

6 Plaintiffs have shown nothing that  
7 guarantees them the right to equal shares that they  
8 claim, and so there is no credible basis to suspect  
9 wrongdoing.

10 Second, plaintiffs seek to learn why  
11 their standing orders to invest at every opportunity  
12 were not followed. To establish a credible basis to  
13 investigate wrongdoing within the partnerships, they  
14 would have to establish a credible basis to conclude  
15 they have a right to receive opportunities to invest  
16 to avoid dilution in the partnerships, and that such  
17 requisite offers to invest were not made. The  
18 unrebutted record evidence clearly shows what happened  
19 on that point: the offer was made, but plaintiffs'  
20 then-trustees declined.

21 Nordell testified that Greylock first  
22 approached the 2009 partnership in 2011 about a  
23 \$12 million investment opportunity. That's at JX 29,  
24 page 35, line 21, to page 40, line 14. Some of the

1 limited partners, including the Murfeys, committed to  
2 that opportunity. Greylock came back with a second  
3 \$12 million opportunity, and although other limited  
4 partners participated in that second opportunity, the  
5 Murfeys trustees did not. That explains the one-time  
6 drop in ownership in 2011 for the 2009 partnership.

7 Plaintiffs provide no evidence to  
8 rebut this testimony, introduce no other theory, and  
9 draw no other conclusion. Based on this failure  
10 alone, they have failed to show a credible basis for  
11 investigating other theories for the diminution in  
12 their shares within the partnership.

13 The record provides an even more  
14 detailed explanation. Defendants provided a 2011 email  
15 chain between the then-trustees, Mr. Chisholm and  
16 Ms. Muth, discussing the second opportunity. Those  
17 co-trustees knew about the opportunity and deciding  
18 against investing more. This is confirmed in a 2018  
19 email Mr. Chisholm sent to plaintiff's counsel, where  
20 Chisholm says that it was "beneficiaries and trustees"  
21 that "decided not to increase the commitment by an  
22 additional \$165,000 for a variety of reasons." Those  
23 are JXs 87 and 88.

24 Plaintiffs challenge the admission of

1 JXs 87 and 88 on relevance and hearsay grounds. These  
2 are the only documents subject to objections that I am  
3 relying on in this opinion, and so will be the only  
4 objections I address. The documents are clearly  
5 relevant because they relate to the supposed credible  
6 basis for suspecting wrongdoing.

7           Plaintiffs must show a credible basis  
8 to suspect wrongdoing related to the drop in their  
9 percentage. Both documents go directly to the point  
10 and explain why the decreased percentages were not the  
11 result of wrongdoing by the partnership or general  
12 partner.

13           Second, as to hearsay, plaintiffs  
14 complain that Chisholm was not deposed and did not  
15 appear at trial to be subject to cross-examination.  
16 Plaintiffs miss that Chisholm is not a stranger. At  
17 all relevant times he has been a trustee of the trusts  
18 on behalf of which plaintiffs purportedly brought this  
19 action. His statements are thus not hearsay under  
20 Delaware Rule of Evidence 801(d)(2)(D), as Chisholm  
21 was the Trusts' agent, the statement is within the  
22 scope of his relationship and responsibilities as  
23 Trustee, and the statements were made while he held  
24 the role of Trustee.

1           The documents only further confirm  
2 other unrebutted evidence about why the Trusts'  
3 ownership decreased in 2011.

4           Plaintiffs have not shown a credible  
5 basis to suspect wrongdoing in their missed  
6 opportunity to invest for any reason other than their  
7 trustees declining the opportunity.

8           I recognize that the credible basis  
9 standard is incredibly low, but in this case, the  
10 record contains an unrebutted admission by plaintiffs'  
11 then-trustees that they knew about the offer and  
12 decided against it. The record does not establish any  
13 basis for suspecting wrongdoing within the partnership  
14 in the form of improper admission of new partners, not  
15 maintaining equal participation, or in not being  
16 informed of the opportunity to invest.

17           I will now move on to whether  
18 plaintiffs' ability to copy the K-1s is necessary and  
19 essential for the purpose plaintiffs have  
20 demonstrated, of valuing their shares.

21           "Even if the applicable technical  
22 requirements are met and [a plaintiff's] purpose is  
23 proper, '[t]he scope of such relief will typically be  
24 limited only to the inspection of those books and

1 records that are necessary and essential to the  
2 satisfaction of the stated purpose.'" That is a quote  
3 from *Holman versus Northwest Broadcasting*.

4           It is helpful to remember that  
5 plaintiffs have already received other documents from  
6 defendants, and plaintiffs' CPA has reviewed the K-1s  
7 with Mr. Nordell. The narrow issue before the Court  
8 is only whether the plaintiffs themselves may receive  
9 and keep copies of the K-1s.

10           Based on my review of the plaintiffs'  
11 K-1s that are in evidence, I conclude that doing so is  
12 not necessary and essential to satisfying the stated  
13 valuation purposes. I see no type of information on  
14 the K-1s that would help the plaintiffs value their  
15 investments. And I do not see how the percentages of  
16 the other limited partners, with identifiers, are  
17 necessary and essential to value plaintiffs'  
18 investments.

19           I twice asked about this at trial, in  
20 the transcript at page 14, lines 12 through 16 and at  
21 page 17, lines 17 through 20, and neither time was I  
22 pointed to information that would assist plaintiffs.

23           Plaintiffs assert another concept  
24 under the umbrella of their valuation purpose:

1 identifying the other partners so that they can  
2 determine the ease of selling their shares. The  
3 strained theory of selling their shares is  
4 contradicted by their desire to invest as much as  
5 possible, which is the sentiment underlying their  
6 angst at missing the second investment opportunity  
7 that underlies this entire case.

8                   And holding copies of the K-1s would  
9 not help plaintiffs in determining the liquidity of  
10 their shares. These are family investment vehicles.  
11 And at argument, page 20 of the transcript,  
12 plaintiffs' counsel identified three individuals who  
13 "control a majority of the interest in the  
14 partnership." In other words, to the extent knowing  
15 who controls the general partnership informs their  
16 ability to sell their shares, plaintiffs already know  
17 that information, so the K-1s are not necessary and  
18 essential to that analysis.

19                   Because the K-1s do not include  
20 information that will assist in valuing the shares,  
21 they are not necessary and essential to that purpose.

22                   Finally, the parties devoted  
23 significant time to Sections 12.1 and 12.2 of the  
24 partnership agreements. Defendants correctly point

1 out that plaintiffs' complaint does not pursue  
2 separate claims under the statute and the partnership  
3 agreements. I think that is too technical a reading,  
4 however, because plaintiffs' demand letters referenced  
5 the partnership agreements, JX 10 and 12, as did  
6 defendants' response to those letters, JX 11 and 13.

7 "This Court consistently has treated a  
8 contractual books and records right provided in a  
9 limited liability company's ("LLC") or a limited  
10 partnership's ("LP") governing instrument as  
11 independent from the relevant default statutory  
12 right." That is a quote from *Grand Acquisition versus*  
13 *Passco*.

14 The operative sections, quoted  
15 earlier, cover which books and records must be kept  
16 and made available for inspection. Plaintiffs'  
17 post-trial brief describes Sections 12.1.1 and 12.1.3  
18 as tracking "Delaware law regarding the documents that  
19 a successful books and records plaintiff is entitled  
20 to obtain." And 12.2.1 uses language similar to the  
21 statute: "purposes reasonably related to the Limited  
22 Partner's Interest as a Limited Partner."

23 At least as far as the K-1s are  
24 concerned, the proper purpose requirement of the

1 partnership agreements and Section 305 is thus the  
2 same. This is not a case like *In re Paine Webber* or  
3 *Schwartzberg v. CRITF*, where the agreements omitted a  
4 proper purpose requirement. These cases demonstrate  
5 that, again quoting from *Grand Acquisition v. Passco*,  
6 "this Court has indicated that providing an entity's  
7 owners with an unconditional contractual right to  
8 inspect that entity's books and records has the  
9 practical impact of rendering the relevant statutory  
10 preconditions and defenses inapplicable to that  
11 independent contractual right."

12           Plaintiffs have not argued that they  
13 have an unconditional contractual right to inspect the  
14 partnership's documents. What they have argued is  
15 that upon establishing a proper purpose, all of the  
16 books and records -- not some, but all -- identified  
17 in Section 12.1 must be provided to the limited  
18 partner.

19           In other words, once they show a  
20 proper purpose, they do not need to show the requested  
21 books and records are necessary and essential to their  
22 purpose.

23           But Section 12.2.1 permits each  
24 limited partner to obtain the information in Section

1 12.1 "for purposes reasonably related to the Limited  
2 Partner's Interest." The simple word "for" links the  
3 right to obtain the information in Section 12.1 to the  
4 limited partner's proper purpose in the very same way  
5 Section 17-305 does.

6 The LLC agreement in *DFG Wine Co.*  
7 *versus Eight Estates Wine Holdings* used this same  
8 language, and the Court applied Section 18-305's  
9 "necessary and essential" language to consider whether  
10 the member was entitled to the documents sought among  
11 those the company was required to maintain.

12 Plaintiffs cite no contrary case  
13 applying the proper purpose requirement without the  
14 "necessary and essential" element. Section 12.2.1  
15 incorporates the proper purpose requirement from  
16 Section 17-305, thereby incorporating the derivative  
17 requirement that plaintiffs demonstrate the materials  
18 in Section 12.1 are necessary and essential to their  
19 valuation purpose.

20 Plaintiffs' claims thus fail under the  
21 contractual provisions for the same reasons that they  
22 fail under Section 17-305.

23 One prior ruling is affected by this  
24 conclusion. On April 24, I ruled that the information

1 from the K-1s that were the subject of the disputed  
2 request could remain confidential in the parties  
3 briefing and filings until a final ruling. Because I  
4 have ruled in defendants favor, those portions should  
5 remain under seal.

6 Counsel, are there any questions?

7 MR. NEFF: No, Your Honor.

8 MR. DICAMILLO: No, Your Honor.

9 THE COURT: Will you take care of  
10 submitting an implementing order?

11 MR. DICAMILLO: I'll take care of it,  
12 Your Honor. Have a good weekend.

13 THE COURT: You too.

14 MR. NEFF: Thank you, Your Honor.

15 (Conference adjourned at 4:20 p.m.)

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CERTIFICATE

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3 I, JEANNE CAHILL, RDR, CRR, Official  
4 Court Reporter for the Court of Chancery of the State  
5 of Delaware, do hereby certify that the foregoing  
6 pages numbered 3 through 26 contain a true and correct  
7 transcription of the proceedings as stenographically  
8 reported by me at the hearing in the above cause  
9 before the Vice Chancellor of the State of Delaware,  
10 on the date therein indicated.

11 IN WITNESS WHEREOF I have hereunto set  
12 my hand at Wilmington, Delaware, this 24th day of  
13 June, 2019.

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15  
16 /s/ Jeanne Cahill

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17 Jeanne Cahill, RDR, CRR  
18 Official Chancery Court Reporter  
19 Registered Diplomat Reporter  
20 Certified Realtime Reporter  
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