

## Delaware Supreme Court Clarifies Limited Partner Rights to Books and Records: The Decision Will Have a Meaningful Impact on All Hedge, Private Equity, and Venture Funds

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### What You Need To Know:

- For managers preparing documents for their first Delaware fund, the limited partnership agreement of the fund should expressly require that any materials requested in connection with a books and records request be “necessary and essential” to the purpose of the request. In addition, the limited partnership agreement should expressly state that limited partners are not entitled to copies of any books, records, or other information regarding any other investor (including, without limitation, the K-1s of any other investor).
- Managers with existing Delaware funds should consider how, when, and whether to update their existing limited partnership agreements. For existing funds, it likely will be difficult to amend limited partnership agreements to include the “necessary and essential” requirement or to expressly exclude the right to receive K-1s of other investors without investor consent to such amendment. For successor, co-investment, and follow-on funds, managers will need to consider whether to modify their standard documents on a go-forward basis.
- In addition, for managers advising funds organized in other jurisdictions (e.g., the Cayman Islands, BVI, Hong Kong, Ireland, or Luxembourg), subject to any restrictions that may be imposed by local law, the manager should strongly consider aligning the information rights of investors in those other funds with those of investors in the Delaware funds.

### Overview

In *Murfey v. WHC Ventures, LLC*, the Delaware Supreme Court declined to infer that materials requested pursuant to a books and records request regarding a Delaware limited partnership must be “necessary and essential” to the purpose of the request. Instead, the Delaware Supreme Court reiterated the importance of freedom of contract and the ability of general partners and limited partners to contract for the terms of their relationship, including limitations on books and records

requests that extend beyond those set forth in Delaware’s Revised Uniform Limited Partnership Act.

Following the ruling, unless a limited partnership agreement expressly requires it, a limited partner seeking the books and records of a Delaware limited partnership is not required to show that the materials requested are “necessary and essential” to the purpose of the request. As a result, the potential scope of such requests has been expanded, and the threshold that must be satisfied to entitle a

limited partner (including investors in hedge, private equity, and venture funds) to information regarding the partnership and the other partners has been lowered. Importantly, in this case, the result permits two investors to access the Schedules K-1 ("K-1s") of other investors in the fund, information that typically is considered confidential within the asset management industry.

## Background

The plaintiffs, trustees for trusts with ownership interests in multiple funds structured as Delaware limited partnerships, requested to inspect the partnerships' books and records. The request came in response to the plaintiffs' ownership interests decreasing in value over time and after their lack of participation in an investment opportunity, as well as in connection with their allegations of mismanagement and wrongdoing. The plaintiffs' demand asked for the partnerships' tax information for the six most recent taxable years. The legal dispute centered on the plaintiffs' access to and the retention of copies of the other limited partners' K-1s. Based on precedent from the Court of Chancery, which has interpreted the books and records provision of Delaware's limited partnership statute (6 Del. C. § 17-305) in the same manner as the Delaware corporate

statute (8 Del. C. § 220) (i.e., requiring both a "proper purpose" and that documents sought be "necessary and essential" to achieving that purpose), the lower court concluded that the K-1s were subject to the requirement that requested documents be "necessary and essential" to the stated purpose, and that the request for K-1s did not meet the standard.

On appeal, the Delaware Supreme Court focused on the trusts' contractual rights and held that the "necessary and essential" standard need not apply without the express condition being set forth in the partnership agreements. The Delaware Supreme Court noted that the partnership agreements in question did not include plain language clear enough to establish the intent to apply the "necessary and essential" standard. The limited partnership agreements provided that limited partners could request: (i) the partnerships' tax returns, and (ii) information related to the name, address, capital contributions, and partnership percentage of each limited partner. According to the plain terms of the partnership agreements, the Delaware Supreme Court held the K-1s were reasonably related to the trusts' purpose of valuing their ownership interests; thus, the trusts were entitled to the K-1s under the terms of the partnership agreements.

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