



Must an LLC Turn Over the Valuation Records of Its Subsidiary?

***DFG Wine Co., LLC v. Eight Estates Wine Holdings, LLC*, C.A. No. 6110-VCN (Del. Ch.)
(August 31, 2011)**

The Delaware Chancery Court just provided a good checklist of documents to request and require in a “books and record” action by the controlling member of a limited liability company (LLC), particularly when the purpose of the request is to ascertain the value of the member’s holdings, not just in the LLC but in its subsidiary. In this case, the LLC held the assets of a company that owned and operated eight wine brands. When the subsidiary started to flounder, the LLC’s limited partners petitioned the Delaware Chancery to access the books and records of the LLC as well as the subsidiary. The LLC objected under Delaware law, maintaining that since the subsidiary was near insolvency, the valuation was zero (or a simple matter of mathematics), so the request was “meaningless.” The LLC also said the relevant operating agreements gave members no separate contractual right of access to the sub’s records.

The court disagreed on both points. The operating agreements gave members inspection rights equal to those provided by Delaware law. And under the case law, since the defendant had no separate value from the subsidiary, it would be “unfair” to require the member to attempt to value its holdings without providing access to the records of the LLC’s only asset—in particular, those records pertaining to value, the court held. It then approved most of the petitioner’s 16-item request for books and records, excepting only those that did not relate directly to value (e.g., the subsidiary’s ability to pay its creditors) and permitting redaction for trade secrets.