

Delaware LLC Law Update

August 25, 2026

Bengson v. Elevate RCM Holdings, LLC: Delaware Court of Chancery Finds that Members may Waive Inspection Rights

In *Bengson v. Elevate RCM Holdings, LLC*, C.A. 2025-1347-DG (Del. Ch. August 10, 2026), the Delaware Court of Chancery held that members of a Delaware limited liability company (an "LLC") may waive their rights to inspect the books and records of an LLC in a limited liability company agreement. The Court's ruling highlights the policy of contractual freedom in the Delaware Limited Liability Company Act (the "LLC Act").

In July of 2025, Elevate RCM Holdings, LLC ("Elevate") sold an indirect subsidiary and subsequently distributed the proceeds of the sale to its members. The plaintiffs, Dana and Rick Bengson, who were members of Elevate, asked Elevate to provide them with documentation supporting the distribution, and Elevate provided them with certain limited documentation. The plaintiffs then informally requested more detailed information, but Elevate denied this request. The plaintiffs then made a formal demand for more detailed information, and Elevate proposed a plan whereby an accounting firm, acting on behalf of the plaintiffs, could engage in an on-site inspection for one day of records that Elevate designated. The plaintiffs rejected that plan and commenced litigation.

Section 11.1(b) of Elevate's limited liability company agreement included language stating that "each Member hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law (including as contemplated by § 18-305, subsection (g), of the [LLC Act]), any ... information, inspection, examination, demand or similar access rights." Elevate argued that the plaintiffs waived their rights to inspect Elevate's books and records under this provision and, therefore, Elevate was not required to provide any books and records. The plaintiffs argued that because Section 18-305 of the LLC Act does not use the word "eliminate" (rather it provides that inspection rights may be "restricted" by the LLC Agreement), their inspection rights could not be eliminated, and they were entitled to inspect the requested documents.

The Court found that while Section 18-305(g) of the LLC Act does not include the word "eliminate" when addressing the ability to modify inspection rights, the LLC Act also does not prohibit members from waiving their inspection rights. Here, the limited liability company agreement used waiver language, and the Court found that the plaintiffs, by agreeing to be bound by the limited liability company agreement, had freely and knowingly waived their inspection rights under the LLC Act. The Court stated that "[b]arring sufficient public policy concerns or express statutory language prohibiting a waiver, sophisticated parties may contractually waive a statutory right in exchange for valuable consideration." The Court found that the plaintiffs were sophisticated parties who had received valuable consideration when agreeing to be bound by the limited liability company agreement, and there were no public policy concerns that would preclude such a waiver. While the

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Court noted support for the proposition that Section 220 of the General Corporation Law of the State of Delaware may confer mandatory rights, the Court advised LLC investors to carefully review limited liability company agreements and not to expect courts to save them from their negotiated contractual arrangements.

The Court's opinion in this case is a reminder that a key policy of the LLC Act is "to give maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements." Where parties to a limited liability company agreement freely and knowingly waive statutory rights in a limited liability company agreement, Delaware courts will seek to enforce such a waiver absent public policy concerns or statutory restrictions.