Attorney-Client Privilege May Not Shield Documents Requested By Shareholders Under Delaware Law

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The Delaware Supreme Court recently issued a decision in Wal-Mart Stores, Inc. v. Indiana Electrical Workers Pension Trust Fund, in which it required Wal-Mart to produce certain attorney-client communications requested by one of its shareholders. Importantly, this ruling did not come during discovery in a derivative lawsuit but was instead made pursuant to an interesting aspect of Delaware law that allows shareholders to inspect a corporation's books and records as part of its investigation of a potential claim or for any other "proper purpose." In affirming the Chancery Court's order compelling the production of these documents, the Delaware Supreme Court adopted a not-universally-accepted fiduciary exception to the attorney-client privilege, which is a development about which any corporation organized under Delaware law should be aware.