

## Papa John's Tries To Stymie Founder's Chancery Demands

By **Jeff Montgomery**

Law360 (October 17, 2018, 8:40 PM EDT) -- Papa John's pizza chain founder John Schnatter's "unbounded" demands for company records in a Delaware Chancery Court suit and alleged intent to use the results in future personal litigation against the company justify denial or heavy pruning of disclosures, company attorneys said late Tuesday.

The post-trial brief followed a one-day trial on Oct. 1 before Chancellor Andre G. Bouchard that saw Schnatter called as the only witness for oral arguments on his records demand. At the time, Schnatter testified that he needed the documents to assess board member compliance with fiduciary duties leading up to his resignation under pressure as board chairman and earlier exit as chief executive officer.

Papa John's argued that Schnatter's demands were actually camouflaged efforts to investigate the company in support of a different fiduciary duty suit, filed Aug. 30, or other future litigation challenging company conduct before and after his resignation as CEO and board chairman, and revocation of an agreement making him the brand's public spokesman.

"If this court were to approve Schnatter's demand as written, any director who disagrees with another director's decision at a board meeting could automatically demand (and receive) personal emails and text messages from every other director in the boardroom," the brief said. "That is not, and cannot be, Delaware law."

Schnatter stepped down as CEO in December 2017 amid controversy over public criticism of the National Football League's response to player "take a knee" protests during game-opening playing of the National Anthem. He was later accused of using a racial epithet during a diversity training teleconference, leading to his exit as chairman and, days later, a books-and-records demand and lawsuit.

"Here, Schnatter is not seeking documents for a purpose reasonably related to his position as a director. He is seeking documents that relate to his individual status as John Schnatter," the brief said.

Schnatter, who disputed characterization of comments leading to his exit, conceded during trial that he wants to "get hold of documents he feels will clear him and his reputation," the company's post-trial brief said.

Papa John's attorney also said that Schnatter wanted ammunition to dispute loss of a "Founder's Agreement" that made him the chain's brand spokesman as well as a lease agreement providing him with personal office space at the company's headquarters.

"The trial record here demonstrates that Schnatter's attempts to obscure his individual, personal purpose and pretend to a purpose recognized by Delaware law were all lawyer-driven — and not indicative of Schnatter's real purpose," the brief said.

Schnatter conceded "over and over, at his deposition and at trial, that he had no idea why he was seeking most of the documents requested," according to the brief, which added later: "Schnatter's

trial testimony demonstrates that he has little understanding of what documents he needs or why.”

In addition, the brief said, Schnatter’s reliance on and reference to his own legal counsel, Glaser Weil LLP, for information on reasons for document requests creates a potential “at-issue” waiver of attorney client privilege.

“Either Schnatter should be forced to produce all communications with his counsel regarding the drafting of the demand or this court should strike the testimony elicited on redirect,” the post-trial brief said.

During argument on an unsuccessful effort to have the case dismissed on Sept. 20, the brief said, Chancellor Andre G. Bouchard cautioned Schnatter that he will “have some explaining to do” if he asserts multiple purposes for his document requests that clash with his earlier positions.

Papa John’s argued that the suit Schnatter filed on Aug. 30 claiming director breaches of their duty of care to the business and causing irreparable harm should make him ineligible to use his director’s status to demand documents that could be used to investigate the same actions.

Schnatter is represented by Peter B. Ladig, Brett M. McCartney and Elizabeth A. Powers of Bayard PA, and Garland A. Kelley of Glaser Weil LLP.

Papa John’s is represented by Blake Rohrbacher, Robert L. Burns and Brian F. Morris of Richards Layton & Finger PA.

The case is Schnatter v. Papa John’s International Inc., case number 2018-0542, in the Court of Chancery of the State of Delaware.

--Editing by John Campbell.