



News

Scott Seaman and Bessie Daschbach Discuss ESG Implications of Disney's Win in Books and Records Demand

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Hinshaw partners Scott Seaman and Bessie Daschbach discussed in *Agenda*, a *Financial Times* publication, the implications of a Walt Disney Company win in the Delaware Court of Chancery, which reaffirmed that top executives' public comments on polarizing issues will be treated by courts as a business judgment decision.

Daschbach stated that whatever ESG factors a business acts on, the key questions will be: "Is there a business case for it, and, in turn, is there evident exercise of business judgment around it." She added that

...at the heart of the Disney case outcome, [t]he court found the decision on the part of the board to be one that was duly considered. Without a documented business case and corresponding exercise of business judgment, any business taking up any ESG effort is at risk of being accused of advancing an agenda divorced from its fiduciary obligations.

Seaman noted that there has been "an uptick in records demands on ESG-related issues and on specific corporate action or inaction relating to ESG." He added, "There are a lot of factors that enhance the risks facing companies and their officers and directors apart from political polarization in these divided political times," such as "reptilian tactics of the plaintiff's bar and litigation funding."

[Read the full article](#) (*subscription required*)

"Disney Prevails in Records Demand Sparked by CEO's Comments" was published by *Agenda* on August 11, 2023.

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