IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MITCHELL AIRCRAFT, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N26C-03-049 SKR CCLD
	)	
JPE HOLDINGS LLC,	)	
	)	
Defendant.	)	

Submitted: June 12, 2026
Decided: July 24, 2026

MEMORANDUM OPINION AND ORDER

Upon Consideration of Defendant's
Motion to Dismiss the Complaint: **DENIED**

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Rennie, Judge

I. INTRODUCTION

This decision adds to the emerging body of case law addressing the scope of an expert's authority—frequently that of an accountant—to resolve earnout disputes. This issue typically arises, as it does here, by way of a motion to dismiss pursuant to Superior Court Civil Rule 12(b)(1), wherein a party contends that the governing agreement vests exclusive jurisdiction over the dispute in a designated expert.

In this action, the plaintiff alleges that the defendant breached its contractual obligation not to interfere with the earnout by engaging in sundry bad faith practices during the earnout period. The defendant has moved to dismiss, asserting that an alternative dispute resolution ("ADR") provision in the parties' agreement mandates that all earnout-related disputes be submitted to a third-party accountant.

This provision, however, merely authorizes the independent accountant to make expert, accounting-based determinations regarding whether the defendant properly calculated the company's net sales following the conclusion of the earnout period. In contrast, plaintiff's claims turn on whether the defendant's operational decisions during the earnout period constituted a contractually proscribed effort to depress sales and avoid the earnout obligation. Because these allegations concern operational misconduct rather than post-closing accounting calculations, the dispute falls outside the accountant's contractual authority and professional expertise.

Accordingly, the Motion to Dismiss is **DENIED**.

II. BACKGROUND[1]

A. Factual Background

Mitchell PMA, LLC (the "Company") is a vendor of commercial airline parts.[2] The Company was originally a wholly owned subsidiary of Plaintiff Mitchell Aircraft LLC ("Plaintiff" or "Mitchell").[3] On October 1, 2024, Defendant JPE Holdings LLC ("Defendant" or "JPE") acquired the Company from Mitchell pursuant to an Equity Purchase Agreement (the "EPA").[4]

1. The Earnout Structure and Dispute Resolution Process

The EPA contains an earnout provision. Under EPA Section 1.5 ("Section 1.5"), the earnout is based on net sales ("Company Net Sales") generated during the twelve-month period ending on December 31, 2025 (the "Earnout Period").[5] JPE is contractually responsible for calculating the Company Net Sales for the Earnout Period ("Earnout Period Net Sales").[6] If Earnout Period Net Sales exceed $5 million, JPE must pay Mitchell $8.40 for each dollar earned between $5 million and $5.5 million, up to a maximum earnout payment of $4.2 million (the "Earnout

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[1] The facts are drawn from the well-pled allegations in the Complaint (the "Complaint") (Docket Item ("D.I.") 1) [hereinafter "Compl."].

[2] Compl. ¶ 1.

[3] *Id.*

[4] *Id. See also* EPA (D.I. 1 Ex. A) [hereinafter "EPA § ___"]. The EPA is incorporated into the Complaint by reference.

[5] EPA § 1.5(a).

[6] *Id.*

Payment").[7] During the Earnout Period, JPE is contractually obligated to (1) operate the Company in a manner intended to further its business interests, and (2) refrain from taking any action with the "purpose or primary intent" of "reducing or frustrating" the Earnout Payment.[8]

JPE's calculation of the Earnout Period Net Sales must be set forth in a written statement detailing the basis for its assessment (the "Report").[9] JPE must deliver the Report to Mitchell within fifteen days of the conclusion of the Earnout Period.[10] Upon receipt, Mitchell and its designated accountants have ten days (the "Report Review Period") to inspect the Company's books and records "solely for purposes reasonably related to the calculations of Earnout Period Net Sales."[11]

If Mitchell disagrees with JPE's calculation, it must deliver a dispute notice "specify[ing] the items in the Report disputed by [Mitchell]" (the "Objection Notice").[12] If Mitchell fails to submit an Objection Notice within the prescribed timeframe, "the calculations and determinations in the Report will be final and binding."[13]

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[7] *Id.*

[8] EPA § 1.5(h)(i)).

[9] *Id.* at ¶ 28. *See also* EPA § 1.5(b).

[10] *Id.*

[11] *Id.* at ¶ 30. *See also* EPA § 1.5(c).

[12] *Id.* at ¶ 31. *See also* EPA § 1.5(c).

[13] EPA § 1.5(c).

If Mitchell delivers a timely Objection Notice, the parties have thirty days to "negotiate in good faith to resolve the disputed items and agree upon the Earn-Out Payment[.]"[14] Any "unresolved disputed items will be promptly referred to the Independent Accountant[.]"[15]

2. The Independent Accountant's Rules, Policies, and Procedures

The EPA provides that the Independent Accountant shall evaluate any "unresolved disputed items" using the "rules, policies, and procedures" set forth in EPA Section 1.4 ("Section 1.4").[16] Section 1.4 governs the parties' Purchase Price Adjustment and applies to Section 1.5 disputes with "the necessary changes being made" to accommodate the distinction between a Purchase Price Adjustment and an Earnout Calculation.[17]

The dispute resolution process under Section 1.4 mirrors Section 1.5, subject to differing deadlines. Section 1.4 grants JPE *sixty* days to prepare a "good-faith calculation" of the purchase price and adjustment (the "Closing Date Statement" or "Statement").[18]

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[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.* Technically, the EPA says that Section 1.4 applies "*mutatis mutandis*." *Id.* This means "with the necessary changes having been made." *See Mutatis Mutandis*, Merriam-Webster Online Dictionary (2026), https://www.merriam-webster.com/dictionary/mutatis%20mutandis (last accessed June 15, 2026). In its discretion, the Court has elected to use plain English in the body and reserve the Latinate legalese for the footnotes.

[18] EPA § 1.4(b).

Upon receipt of the Statement, Mitchell has thirty days to review the Company's books and records that were either "necessary or useful" for JPE to prepare the Statement or are "necessary or useful" for Mitchell to "analyz[e]" the Statement.[19] Mitchell must then issue either an "Approval Notice" consenting to the Statement or, if Mitchell "disagrees with [the] calculations," a written statement "identifying with reasonable specificity the items with which [Mitchell] disagrees" (the "Dispute Notice").[20] Following delivery of a Dispute Notice, JPE, Mitchell, and Mitchell's accountants have ten days to "resolve any differences they may have as to the amounts set forth in the Closing Date Statement or the calculation of the Purchase Price and the Adjustment Amount."[21] Remaining "items still in dispute" (the "Remaining Disputes") are then referred to the Independent Accountant.[22]

Section 1.4(d) delineates operational parameters for the Independent Accountant.[23] First, the parties must execute an engagement letter with the prospective Independent Accountant, designated as BDO USA LLP or another "nationally recognized independent accounting or financial consulting firm."[24] The engagement letter instructs the Independent Accountant to "make all determinations

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[19] EPA. §§ 1.4(c)–(d).

[20] EPA § 1.4(d).

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

of the Remaining Disputes in according with the Accounting Principles (notwithstanding any deviations from GAAP or the availability of other accounting methods, policies, practices, and/or procedures under GAAP or otherwise)" and, ultimately, to "determine the Purchase Price and the components thereof" (the "Independent Accountant Determination" or "Determination").[25] The Determination is "final and binding on [Mitchell] and [JPE] for purposes of this Section 1.4, except to correct manifest clerical or mathematical errors."[26]

To formulate its Determination, the Independent Accountant "shall conduct additional review as is necessary to resolve the specific Remaining Disputes referred to it."[27] The parties are required to "cooperate fully" with the Independent Accountant and provide all "information, data, or working papers" utilized to "prepare or calculate" the Statement or Purchase Price.[28] *Ex parte* communication between either party and the Independent Accountant is strictly prohibited, except for the submission of "written answers . . . to written questions," to which the opposing party has five days to respond.[29]

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

Finally, the Independent Accountant's fees are allocated between the parties in proportion to the dollar amount the Independent Accountant awards each party following resolution of the Remaining Disputes.[30]

3. The Indemnification Provision

One additional provision of the EPA is central to this dispute. Pursuant to Section 6.2(b), JPE agreed to indemnify Mitchell for any Losses resulting from JPE's breach of any agreement or covenant in the EPA (the "Indemnification Provision").[31] Section 6.3(b) outlines the procedural mechanism for asserting such claims.[32] It provides that upon identifying a claim, the Indemnified Party shall promptly deliver written notice to the Indemnifying Party "specify[ing] in reasonable detail (to the extent known) the amount or an estimate of the amount of the Liability arising therefrom and the basis therefor."[33] If the Indemnifying Party either disputes or fails to respond to the notice, the Indemnified Party may "pursue its indemnification rights hereunder and whatever other legal remedies may be available to enforce its rights under this Article 6."[34]

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[30] EPA § 1.4(e). Section 1.4(e) explains that if the Remaining Disputes total $50,000, and the Independent Accountant awards JPE $30,000 of that total (i.e., 60%), then *Mitchell* pays 60% of the fees, and JPE 40%.

[31] Compl. ¶ 74. *See also* EPA § 6.2(b).

[32] EPA § 6.3(b).

[33] *Id.*

[34] *Id.*

Critically, the agreement notes that "failure to give . . . prompt notice shall not affect the Indemnified Party's ability to seek reimbursement or otherwise release, waive or limit the indemnification obligations under this Agreement, except to the extent such failure has adversely affected the Indemnifying Party's ability to successfully defend [the claim]."[35]

Finally, EPA Section 9.8 contains a choice-of-law provision specifying that the laws of the State of Delaware "shall govern all questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement."[36]

4. Mitchell Objects to the Earnout

The Court now turns to the factual allegations giving rise to this dispute. The relationship between the parties deteriorated prior to the conclusion of the Earnout Period. On December 22, 2025, Mitchell transmitted a letter notifying JPE of its intent to commence litigation (the "December 22nd Letter").[37] Therein, Mitchell asserted that JPE "failed to operate the Company during the Earnout Period in a manner that would permit the Company to achieve the required Earnout Period Net Sales[.]"[38] Subsequently, in a follow-up communication dated January 2, 2026 (the

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[35] *Id.*

[36] EPA § 9.8.

[37] Compl. ¶ 45. The December 22nd Letter is available as Compl. Ex. C.

[38] *Id.*

"January 2nd Letter"), Mitchell requested access to various books and records to investigate its allegations.[39]

On January 14, 2026, JPE issued the Report, which consisted of a spreadsheet itemizing the sales generated during the Earnout Period.[40] Based on this data, JPE calculated Earnout Period Net Sales to be "$4,982,717.40."[41] This calculation is approximately $17,000 below the minimum contractual threshold required to trigger the Earnout Payment.[42]

The Report Review Period commenced upon issuance of the Report.[43] On January 16, 2026—the second day of the Report Review Period—Mitchell again renewed its demand for the inspection of books and records originally requested in the January 2nd Letter.[44] Mitchell alleges that JPE has failed to make any of this information available.[45]

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[39] *Id.* at ¶ 52. The January 2nd Letter is available as Compl. Ex. D.

[40] *Id.* at ¶ 38. The Report is available as Compl. Ex. B [hereinafter "Report"].

[41] *Id.* at ¶ 49.

[42] *Id.*

[43] *Id.* at ¶ 38.

[44] *Id.* at ¶ 55.

[45] *Id.* at ¶ 57.

B. Procedural Background

On February 27, 2026, Mitchell filed its Complaint,[46] which asserts two causes of action. Count I seeks a declaratory judgment that (a) the Independent Accountant's authority is limited to resolving disputes regarding specific line items in the Report and the mathematical calculation of the earnout, and (b) the operational and bad faith claims raised in the Complaint fall within the exclusive jurisdiction of this Court rather than the Independent Accountant.[47]

Count II alleges that JPE breached the EPA by engaging in six categories of misconduct: (1) violating its contractual obligation to provide Mitchell with access to the Company's books and records during the Report Review Period,[48] (2) failing to operate the Company in a manner that furthered its business interests and avoided interference with net sales during the Earnout Period,[49] (3) engaging in active bad faith efforts to depress the earnout,[50] (4) refusing to complete a commercial purchase that would have secured the earnout,[51] (5) failing to quote approximately $1M in

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[46] *See generally* Compl.

[47] *Id.* at ¶ 68.

[48] *Id.* at ¶ 72. *See* EPA § 1.5(c).

[49] *Id.* at ¶ 73. *See* EPA § 1.5(h)(i).

[50] *Id.* at ¶ 42.

[51] *Id.* at ¶ 43.

prospective product orders,[52] and (6) intentionally delaying an $82,000 shipment of parts to exclude those revenues from Earnout Period Net Sales.[53]

JPE filed the instant Motion to Dismiss (the "Motion") on April 9, 2026, pursuant to Superior Court Civil Rules 12(b)(1) and 12(b)(6).[54] JPE contends that the adjudication of the factual disputes underpinning Mitchell's claims fall within the exclusive jurisdiction of the Independent Accountant.[55] Mitchell then filed its Answering Brief in Opposition (the "Answering Brief"),[56] and JPE subsequently filed its Reply Brief (the "Reply Brief").[57] The Court heard oral argument on June 12, 2026. This decision follows.

III. PARTY POSITIONS

A. JPE's Position

JPE contends that the EPA vests the Independent Accountant with exclusive authority to make all factual determinations related to the earnout, leaving the Court with jurisdiction only to resolve independent questions of law. In support of this

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[52] *Id.*

[53] *Id.*

[54] *See* Motion (D.I. 9) [hereinafter "Mot."].

[55] *See id.*

[56] *See* Answering Brief (D.I. 14) [hereinafter "Ans. Br."].

[57] *See* Reply Brief (D.I. 15) [hereinafter "Reply Br."].

interpretation, JPE highlights the plain language in Section 1.5 which mandates that "all unresolved disputed items" be referred to the Independent Accountant.[58]

Consequently, JPE argues that this Court lacks subject matter jurisdiction over the breach of contract claim (Count II) because it arises directly from unresolved, disputed factual items.[59] With respect to Count I, JPE asserts that the claim must be dismissed either under Rule 12(b)(6) because Mitchell's narrow interpretation of the dispute resolution clause is unreasonable as a matter of law, or under Rule 12(b)(1) because the dismissal of Count II would render the request for declaratory relief moot.[60]

B. Mitchell's Position

Mitchell retorts that this Court possesses subject matter jurisdiction because the underlying operational dispute falls entirely outside the scope of Section 1.5.[61] According to Mitchell, the Independent Accountant's role is strictly limited to an assessment of whether JPE complied with the governing accounting principles when compiling and calculating the individual sales figures set forth in the Report.[62] Mitchell argues that because its allegations involve systemic operational misconduct

[58] Mot. p. 2.

[59] *Id.* at p. 3.

[60] *Id.* at p. 32.

[61] Ans. Br. p. 14.

[62] *Id.* at p. 2.

rather than mathematical or clerical accounting errors, it is not required to exhaust the expert dispute resolution procedures detailed in Section 1.5.[63] Instead, Mitchell maintains that it has properly initiated this action in a court of law to enforce its rights pursuant to the broad remedies authorized by Section 6.3 of the EPA ("Section 6.3").[64]

IV. STANDARD

Three distinct procedural standards govern the Court's review of the Motion.

First, JPE seeks dismissal of Count II under Superior Court Civil Rule 12(b)(1) for lack of subject matter jurisdiction.[65] When considering a motion to dismiss pursuant to this rule, the Court is not required to accept the plaintiff's factual allegations as true and may freely consider facts outside the pleadings.[66] The plaintiff bears the burden of establishing that subject matter jurisdiction exists.[67]

Rule 12(b)(1) is the appropriate procedural vehicle for a motion seeking dismissal in favor of a contractually mandated alternative dispute resolution

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[63] *Id.*

[64] *Id.*

[65] *See* Super. Ct. Civ. R. 12(b)(1).

[66] *In re Proton Pump Inhibitors Prods. Liab. Litig.*, 2023 WL 5165406, at *5 (Del. Super. Aug. 11, 2023); *see also Appriva S'holder Litig. Co., LLC v. EV3, Inc.*, 937 A.2d 1275, 1284 n.14 (Del. 2007).

[67] *Appriva S'holder Litig.*, 937 A.2d at 1284 n.14.

mechanism such as the expert determination process set forth in Section 1.5.[68] Such a motion will be granted where it appears that "as a matter of established doctrine" the Court should decline to exercise its jurisdiction.[69]

Second, JPE moves to dismiss Count I under Superior Court Civil Rule 12(b)(6) for failure to state a claim upon which relief can be granted.[70] In reviewing a Rule 12(b)(6) motion, the Court accepts all well-pleaded factual allegations in the complaint as true and will deny the motion unless the plaintiff could not recover under any conceivable circumstances susceptible of proof.[71] The Court must draw all reasonable inferences in favor of the non-moving party.[72] Even a vague allegation is deemed well pleaded if it provides the opposing party with fair notice of the nature of the claim.[73]

Third, JPE moves in the alternative to dismiss Count I on the grounds of mootness. Under Rule 12(b)(1), Delaware courts lack subject matter jurisdiction over a claim when that claim is moot.[74]

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[68] *See Buzzfeed Media Enters., Inc. v. Anderson*, 2024 WL 2187054, at *4 (Del. Ch. May 15, 2024) (granting Rule 12(b)(1) motion to dismiss in favor of an arbitration provision).

[69] *Id.* (quoting in full *Gandhi-Kapoor v. Hone Cap. LLC*, 307 A.3d 328, 342 (Del. Ch. 2023)).

[70] Mot. p. 3.

[71] *Vito v. Waterslide Prop. Owners Assoc., Inc.*, 2022 WL 4372755, at *2 (Del. Super. Sep. 21, 2022).

[72] *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. Super. 2002).

[73] *Id.*

[74] *Local Home Care P'rs, LLC v. Home Care & Staffing Sols. LLC*, 2025 WL 2393084, at *9 n.112 (Del. Super. Aug. 18, 2025).

V. ANALYSIS

This case adds to a rapidly expanding body of Delaware jurisprudence addressing the contractual allocation of exclusive authority to a private third party to resolve specific disputes. Delaware courts evaluate the scope of a contractually designated party's decision-making authority along a defined "spectrum."[75] At one end of this spectrum lies a traditional arbitration provision, which mimics a judicial proceeding through a private, less formal forum,[76] and vests the arbitrator with broad authority similar to that of a judicial officer.[77] At the opposite end is a discrete "expert determination" wherein the parties entrust a specific, narrow decision to a third party based strictly on that individual's technical skills or specialized knowledge.[78] Many provisions occupy the space between these endpoints. For example, "accountant true-up mechanisms" function as enhanced expert determinations whereby the parties submit narrow disputes regarding post-closing purchase price adjustments to an independent accounting firm for a final and binding determination.[79]

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[75] *Second Run, LLC v. 1WorldSync, Inc.*, 2026 WL 1122632, at *3 (Del. Super. Apr. 24, 2026); *see ArchKey Intermediate Hldgs. Inc. v. Mona*, 302 A.3d 975, 989 (Del. Ch. 2023)) (discussing concept).

[76] *Id.* (quoting *Archkey*, 302 A.3d at 989).

[77] *I Am Athlete, LLC v. IM EnMotive, LLC*, 2024 WL 4904685, at *7 (Del. Super. Nov. 27, 2024); *see also Ray Beyond Corp. v. Trimaran Fund Mgmt., L.L.C.*, 2019 WL 366614, at *1 (Del. Ch. Jan. 29, 2019).

[78] *Terrell v. Kiromic Biopharma, Inc.*, 297 A.3d 610, 617 (Del. 2023).

[79] *Second Run, LLC*, 2026 WL 1122632, at *3; *see also Archkey*, 302 A.3d at 995.

A. Applying the *Terrell* Framework

In *Terrell v. Kiromic Biopharma, Inc.*, the Delaware Supreme Court articulated the framework for evaluating whether a specific dispute falls within the exclusive authority of a contractually designated expert decisionmaker.[80] The Court applies this framework here.

1. Determining whether the Court can assess authority

The Court must first assesses whether it, or the designated third party, has the authority to assess the scope of the dispute resolution provision.[81] If the ADR provision is unambiguously an arbitration agreement, then a presumption arises that the arbitrator decides issues of substantive arbitrability.[82] Conversely, where the provision lacks the traditional hallmarks of an arbitration agreement, the Court applies standard principles of contract interpretation to determine where the provision falls along the authority spectrum.[83]

This threshold inquiry is readily resolved here. The parties agree that Section 1.5(c) is an expert determination provision rather than an arbitration clause.[84] Because the clause does not provide for an arbitrator to determine its own

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[80] *Terrell*, 297 A.3d at 617.

[81] *Id.*

[82] *Id.*; *see also James & Jackson v. Willie Garry, LLC*, 906 A.2d 76, 79 (Del. 2006) (holding that the question of arbitrability is an issue for judicial determination).

[83] *Id.*

[84] Mot. p. 12; Ans. Br. p. 30.

jurisdiction, the scope of Section 1.5 remains an issue of contract interpretation for the Court.[85] Accordingly, the Court must ascertain the intent of the parties by examining the plain language of the agreement,[86] as it would be understood by an objective, reasonable third party.[87]

2. Situating the provision on the authority spectrum

The Court next situates the provision on the spectrum of contractually delegable authority.[88] To accomplish this, Delaware courts apply the "authority test," examining the plain language of the agreement to evaluate the nature and scope of the authority conferred.[89] As the Delaware Supreme Court recognized in *Terrell*, the guiding authority for this inquiry is *Penton Business Media Holdings, Inc. v. Informa, PLC.*[90] *Penton* directs courts to conduct a "taxonomical inquiry" to identify the precise function the parties intended the third party to perform—whether as an arbitrator, expert, or a referee.[91] While the labels utilized by the parties are persuasive, they are not conclusive.[92] Here, the parties agree that the provision

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[85] *Terrell*, 297 A.3d at 617.

[86] *Salamone v. Gorman*, 106 A.3d 354, 368 (Del. 2014).

[87] *Cox Commc'ns, Inc. v. T-Mobile US, Inc.*, 273 A.3d 752, 760 (Del. 2022).

[88] *Second Run, LLC*, 2026 WL 1122632, at *3.

[89] *Id.; see also Archkey*, 302 A.3d at 993.

[90] *See* 252 A.3d 445, 458 (Del. Ch. 2018); *Terrell*, 297 A.3d at 618.

[91] *See Terrell*, 297 A.3d at 618.

[92] *I Am Athlete, LLC*, 2024 WL 4904685, at *6.

mandates an "expert determination" intended to entrust a discrete, technical decision to a specialized professional.[93]

To define the precise boundaries of this expert determination, the Court reviews the contract as a whole through a case-specific inquiry.[94] The recent proliferation of expert determination disputes—frequently involving independent accounting firms—provides a robust body of persuasive precedent to analogize and distinguish.

Particularly instructive is this Court's decision in *I Am Athlete, LLC v. IM EnMotive, LLC*.[95] In that matter, the Court classified an ADR provision as a narrow expert determination—despite the agreement labeling the independent accountant as the "Final Arbiter"—because the provision: (1) lacked traditional arbitration language, (2) tasked the accountant with resolving disputes strictly related to the "*calculation*" of an earnout, and (3) required the parties to exhaust a series of

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[93] *Terrell*, 297 A.3d at 617. *See also* Mot p. 12; Ans. Br. p. 21. The Court notes that JPE has *not* argued that Section 1.5(c) calls for something more arbitration-like than a standard expert determination. Accordingly, the Court "holds" JPE to its identification of Section 1.5(c) as an expert determination. In *Fortis Advisors, LLC v. Stillfront Midco AB*, -- A.3d ----, 2026 WL 406073, *6 (Del. Feb. 13, 2026), the Delaware Supreme Court interpreted an ADR provision as an arbitration provision "despite the apparent relevance of the lines drawn between arbitration and expert determination" because—the Court concluded—a statement made at oral argument constituted a concession that the provision was an arbitration provision. *Stillfront* is accordingly of very limited applicability when trying to place a provision on the "spectrum." Parties should similarly exercise caution in citing *Lytle v. Lytle Intermediate, LLC*. There, the Court rejected the Rule 12(b)(1) argument as waived. 2026 WL 50135, at *4 n.55 (Del. Ch. Jan. 7, 2026).

[94] *Id.*, at 619.

[95] 2024 WL 4904685, at *7 (quoting *Dolce v. WTS Int'l, LLC*, 2024 WL 714128, at *3 (Del. Ch. Feb. 20, 2024)).

preliminary procedures to resolve specific mathematical disputes before submitting the remaining items to the expert.[96]

Like the provision in *I Am Athlete*, Section 1.5 of the EPA establishes a rigid set of procedures designed to resolve calculation issues. The process begins with JPE's preparation of the Report, the express contractual purpose of which is to provide JPE's "*calculation*" of the Earnout Period Net Sales.[97] During the subsequent review period, Mitchell may review JPE's internal documentation "*solely* for purposes reasonably related to the *calculations* of Earnout Period Net Sales."[98] The plain language of Section 1.5 restricts the dispute resolution process to calculation-based issues, rather than encompassing all controversies touching upon the earnout generally.

Further, Section 1.5 confines the Independent Accountant's authority to addressing "unresolved disputed *items*" following a period of good-faith negotiations.[99] Although the EPA does not formally define "item," the term

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[96] *Id.*, at *6; *see also Monica v. Delta Data Software, Inc.*, 2026 WL 370756, at *14 (Del. Super. Feb. 10, 2026) (concluding that contract language such as "assigning a value" to "line items" and "calculations" from those values did not "lend itself" to resolving issues with the defendant's "conduct.").

[97] EPA § 1.5(b). Emphasis added.

[98] Compl. ¶ 51; *see also* EPA § 1.5(c). Emphasis added.

[99] *Id.* (emphasis added).

presumptively carries a consistent meaning,[100] and that meaning strictly limits the scope of the expert's review. Under Section 1.5(c), if Mitchell seeks to dispute an "item," it must indicate where it appears in the Report.[101] Because the Report functions as an itemized spreadsheet of transactions, the term "items" necessarily refers to discrete accounting entries used to calculate the final Earnout Payment.

This interpretation matches the Independent Accountant's contractually defined mandate and professional skillset. Under Section 1.4(d), the Independent Accountant is charged with resolving any "unresolved disputed items" through the application of "Accounting Principles."[102] The EPA explicitly defines "Accounting Principles" as "the Company's historical accounting and valuation practices, policies, conventions, methodologies and procedures."[103] If the designated firm declines the engagement, the parties must select an alternative "nationally recognized independent accounting or financial consulting firm."[104] These provisions confirm that the parties intended to submit technical, accounting-focused

[100] *See, e.g., Radio Corp of Am. v. Philadelphia Storage Battery Co.*, 6 A.2d 329, 334 (Del. 1939) ("[W]ords used in one sense in one part of the contract will ordinarily be considered to have been used in the same sense in another part of the same instrument[.]").

[101] EPA § 1.5(c).

[102] EPA § 1.4(d).

[103] EPA § 8.1.

[104] EPA § 1.4(d).

calculation issues to an expert specifically qualified to review and implement historical corporate accounting practices.

This exacting, transaction-specific mechanism for resolving calculation disputes stands in sharp contrast to the broad framework established for asserting breach of contract claims under the Indemnification Provision. Section 6.3 requires an indemnified party alleging a breach of contract to notify the counterparty and provide a reasonably detailed estimate of damages only "to the extent known."[105] If the indemnifying party disputes the claim, the insured party may immediately seek redress and pursue "whatever other legal remedies may be available."[106] Unlike the rigid parameters governing the Independent Accountant's review, the indemnification process is structured to accommodate the factual uncertainties inherent in litigating governance and operational misconduct.

Finally, the inclusion of an independent indemnification pathway proves that the parties did not intend Section 1.5 to serve as the sole or exclusive remedy for all earnout-related disputes. This structural layout distinguishes the present dispute from the contract reviewed in this Court's decision in *Blackstone Power & Natural Resources Holdco L.P. v. Nextera Energy Transmission Investments, LLC*.[107] In *Blackstone Power*, the Court granted a motion to dismiss for lack of subject matter

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[105] EPA § 6.3(b).

[106] *Id. See also* Section 6.2(b).

[107] 2026 WL 1079875, at *9 (Del. Super. Apr. 21, 2026).

jurisdiction because the contract explicitly contracted for the ADR mechanism—an expert determination—to function as the "sole and exclusive" remedy for all claims arising out of their agreement, subject only to a narrow exception for equitable relief.[108] Here, the Independent Accountant's narrow mandate and specialized skillset indicate a limited administrative function, and the agreement expressly preserves the parties' right to litigate broader operational breaches of contract directly in a court of law.

3. Scope of the expert's authority relative to the underlying claims

At the final stage of the *Terrell* analysis, the Court evaluates whether the specific allegations at issue fall within the expert's contractually defined scope and professional skillset.[109] In conducting this evaluation, the Court must determine whether the claims present the type of fact-intensive, technical accounting questions that the parties intended to delegate to a financial professional.[110] The Court looks beyond the parties' self-serving characterizations of the dispute to determine independently whether the core issues fall within the expert's contractually delegated ambit.[111]

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[108] *Id.*

[109] *Second Run, LLC*, 2026 WL 1122632, at *4.

[110] *I Am Athlete*, 2024 WL 4904685, at *7; *see also Dolce v. WTS Int'l, LLC*, 2024 WL 714128, at *3 (Del. Ch. Feb. 20, 2024).

[111] *See Second Run, LLC*, 2026 WL 1122632, at *1 (finding that the Court had jurisdiction because although the parties' dispute *appeared* to arise out of the technical calculation of this provision, it ultimately hinged on the parties' differing interpretations of a key contract term).

In *I Am Athlete*, this Court accepted the plaintiff's argument that when a defendant allegedly shuttered a business and divested its assets, it breached its contractual obligation to utilize commercially reasonable efforts to maximize operational performance during an earnout period.[112] In ruling that the controversy fell outside the purview of the independent accountant, this Court explicitly distinguished between technical disputes appropriate for an expert determination—such as mathematical miscalculations or improperly implemented accounting principles—and operational disputes arising from a defendant's alleged breach of distinct covenants governing the management of the acquired business.[113]

Similarly, the primary dispute between Mitchell and JPE is whether JPE's operational conduct breached affirmative and negative covenants to operate the company in a manner intended to further its business interests and refrain from taking actions with the primary intent of frustrating the earnout. These allegations—which include claims that JPE actively depressed sales, refused to execute a strategic commercial transaction, failed to quote approximately $1 million in prospective product orders, and intentionally delayed an $82,000 shipment—extend far beyond

[112] *I Am Athlete*, 2024 WL 4904685, at *7.

[113] *Id.* (citing *Fortis Advs., LLC v. Dematic Corp.*, 2022 WL 18359410, at *16 (Del. Super. Dec. 29, 2022). To be sure, parties can contract to have questions of "commercially reasonable efforts" addressed by experts. *See Blackstone Power*, 2026 WL 1079875, at *7 (holding that parties could contractually delegate such determinations to an "industry expert."). *Blackstone Power* is the exception that proves the rule. There, both the contractual scope of the expert and its skillset aligned to equip it with the authority and ability to address the scope of "commercially reasonable efforts." That is not the case here.

a retrospective, technical accounting assessment of how the Earnout Period Net Sales were calculated. Instead, they present the core liability question of whether JPE wrongfully interfered with the generation of those sales in breach of the EPA. Because this controversy turns on whether the JPE honored its operational covenants during the Earnout Period, rather than whether it misapplied accounting principles after the fact, the dispute falls outside the scope of Section 1.5, and this Court retains subject matter jurisdiction.[114]

B. Defendant's Procedural Objections

Despite the central relevance of the Section 6.2 indemnification provision in this dispute, JPE failed to address it in its opening brief in support of its Motion. In its Reply Brief, JPE raises a new procedural objection, arguing that Mitchell is barred from pursuing indemnification because its Objection Notice was issued "pursuant to Section 1.5(c)," and failed to formally invoke Article 6.[115] Accordingly, JPE

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[114] In *Katz v. Infusion Services Management, LLC*, this Court confronted a complaint that included both disputes within the expert's authority and disputes within the Court's. *See* 2025 WL 2979825, at *2 (Del. Super. Oct. 22, 2025). Rather than direct the parties to simultaneously litigate before the Court and the expert, the Court concluded that efficiency favored resolving the legal disputes first, and then referring any extant expert issues to that authority. Here, the Court similarly concludes that even if some of the categories of misconduct could arguably fall within the scope of Section 1.5(c), the most efficient way for the case to move forward is for the Court to review the action as a whole, while reserving any accounting disputes for subsequent resolution by the Independent Accountant. *C.f. Belknap Hldgs., LLC v. Midwest Prototyping, LLC*, 2024 WL 4441958 (Del. Super. Oct. 8, 2024) (dismissing claim because the expert accountant was "best positioned" to address the central issues).

[115] Reply Br. p. 3.

contends, Mitchell failed to provide contractually compliant notice of its intent to seek direct indemnification, thereby waiving its claims.[116]

As an initial matter, this argument raises factual issues inappropriate for resolution on a motion to dismiss. Further, JPE's underlying proposition—that Mitchell waived its indemnification rights through a technical deficiency in its initial notice—directly contradicts the plain language of the EPA. While Section 6.3 instructs an indemnified party to provide prompt written notice of a claim, including a damages estimate "to the extent known," it imposes no strict forfeiture deadline.[117] To the contrary, the agreement explicitly states that failure to provide prompt notice "shall not affect" the moving party's right to seek indemnification "except to the extent such failure has adversely affected the Indemnifying Party's ability to successfully defend [the] Direct Claim."[118] JPE does not allege, let alone demonstrate, that Mitchell's purported lack of notice has prejudiced its ability to defend against this action. Accordingly, JPE's waiver argument fails as a matter of law.

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[116] *Id.*

[117] EPA § 6.3(b).

[118] *Id.*

C. Count I Survives Dismissal

While the Complaint asserts two separate counts, the parties focused their substantive arguments on whether Count II should be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1). JPE moves to dismiss the declaratory judgment claim in Count I on the grounds that it (1) fails to state a claim under Rule 12(b)(6), or (2) is rendered moot by the presumptive dismissal of Count II.[119] The Court addresses these arguments briefly

The Court possesses statutory discretion to grant declaratory relief provided the action presents an "actual controversy."[120] In Delaware, an "actual controversy" satisfies four elements:

> (1) It must be a controversy involving the rights or other legal relations of the party seeking declaratory relief; (2) it must be a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claim; (3) the controversy must be between parties whose interests are real and adverse; and (4) the issue involved in the controversy must be ripe for judicial determination.[121]

JPE's sole basis for seeking dismissal under Rule 12(b)(6) is its assertion that Mitchell's interpretation of Section 1.5(c) is "unreasonable" as a matter of law.[122] However, the Court has determined that Mitchell's interpretation is not only

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[119] Mot. p. 31–32.

[120] *XL Specialty Ins. Co. v. WMI Liquid. Tr.*, 93 A.2d 1208, 1216 (Del. 2014).

[121] *In re COVID-Related Restrictions on Religious Servs.*, 326 A.3d 626, 642-43 (Del. 2024) (quoting *Rollins Int'l v. Int'l Hydronics Corp.*, 303 A.2d 660, 662-63 (Del. 1973)).

[122] Mot. p. 31.

reasonable, but correct. Finally, because Count II survives Defendant's jurisdictional challenge, Count I is not moot. Count I, therefore, survives dismissal.

VI. CONCLUSION

For the foregoing reasons, Defendant JPE Holdings LLC's Motion to Dismiss is **DENIED** as to both Count I and Count II.

IT IS SO ORDERED.

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Sheldon K. Rennie, Judge