IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

GIMCO, INC. and THOMAS GIMBEL,	)	
Plaintiffs,	)	
	)	C.A. No. 2025-0770-DG
v.	)	**UNDER SEAL**[1]
CAPONE HOLDCO, LLC,	)	
Defendant.	)	

MAGISTRATE'S REPORT

Date Submitted: December 18, 2025
Date Decided: October 23, 2026

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GIBBS, M.

[1] This report is being issued under seal to protect confidential information that may not have been made public through the hearing. Under Court of Chancery Rule 5.1, I will not unseal this report unless, within five (5) days, either party files a notice stating grounds for any continued restriction and requesting a determination whether good cause exists therefor.

This records inspection action is asserted on behalf of two related plaintiffs – a member and a member-designated manager of a holding company formed as a Delaware LLC to hold interests in an operating company the manager-plaintiff founded and ran for many years as its CEO. The member-plaintiff of the LLC has inspection rights under the entity's operating agreement. In this report, the Court determines whether additional inspection is warranted.

The manager-plaintiff seeks to inspect records under Delaware's Limited Liability Company Act. The Court concludes that no additional inspection is warranted because the manager failed to state a proper purpose. His first stated purpose, to perform managerial duties, fails because the record reflects that his managerial duties have been limited to attending board meetings, and this limitation is consistent with the terms of the entity's operating agreement. The manager did not argue that he lacks sufficient and timely information needed to participate in board meetings; he conceded that those materials are provided. Instead, the manager argued that he is entitled to receive unfettered and contemporaneous access to the same information that other managers receive, notwithstanding that the other managers have materially different authority, and may receive information in a capacity other than as manager of the holding company.

The manager-plaintiff's second stated purpose is to ensure that the other managers are not acting in their own interest or failing to discharge their duties. The governing operating agreement, however, eliminates managers' fiduciary duties and permits them to act in their own interest. The Court concludes that the manager is pursuing a personal interest unrelated to his position as manager – retaining access to the scope of information he enjoyed when he was the CEO of the operating company.

The Court concludes that neither side of the action predominated on the merits, and that each must therefore pay its own attorneys' fees.

I. FACTS[2]

A. The Parties

The defendant in this action is Capone Holdco, LLC ("Holdco"), a Delaware limited liability company formed in 2022 to acquire non-party LaSalle Staffing, LLC ("LaSalle").[3] LaSalle is Holdco's only subsidiary.[4] LaSalle is "engaged in the business of providing staffing, recruiting, direct hire and/or employment or human capital consulting services[.]"[5]

Holdco acquired an interest in LaSalle via a transaction with LaSalle's founder and CEO, plaintiff Thomas Gimbel.[6] In connection with that transaction, Gimbel formed plaintiff GimCo, Inc. ("GimCo"), an Illinois corporation, to hold his interest in Holdco.[7] GimCo is a member of Holdco, holding 38.7% of the interest in Holdco, in the form of Series A Units.[8] Gimbel is the sole director of GimCo.[9]

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[2] The facts are drawn from the parties' submissions and the trial record, which consists of facts stipulated in the parties' pretrial order and 214 joint exhibits.

[3] *See* JX1 ("LLC Agreement") at 6; *see also* Am. Pretrial Order ("PTO") ¶ 9, Dkt. 112.

[4] *See* Dkt. 114 Ex. 1; *see also* Trial Tr. 70:24–71:1, Dkt. 125.

[5] LLC Agreement at 6; PTO ¶ 7.

[6] PTO ¶¶ 7, 9.

[7] Tr. of Videotaped Dep. of Edward Thomas Gimbel ("Gimbel Dep.") 27:17–24, Dkt. 59 Ex. B; JX69 ("Compl.") ¶ 9.

[8] LLC Agreement Schedule A.

[9] Gimbel Dep. 27:9–11.

Nonparty Capone Holdings JV, LLC ("Capone JV") is the only other member of Holdco.[10] Nonparty Infinedi Partners, LP ("Infinedi"), a private equity firm, formed Capone JV, in connection with Infinedi's investment in LaSalle.[11] Capone JV holds the other 61.3% interest in Holdco, via Series B Units.[12] Infinedi has only two partners, Jay Hegenbart and Carter Harned.[13]

GimCo and Capone JV are "Qualified Members" of Holdco.[14] Capone JV is also the "Sponsor Member" of Holdco.[15] GimCo and Capone JV appoint Holdco's board of managers (the "Board").[16] GimCo has appointed Gimbel (the "GimCo Manager") to the Board.[17] Capone JV has appointed Infinedi's partners, Hegenbart and Harned (the "Sponsor Managers").[18]

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[10] LLC Agreement at 15; LLC Agreement Schedule A.

[11] *See* PTO ¶ 11.

[12] LLC Agreement Schedule A.

[13] PTO ¶ 11.

[14] LLC Agreement at 11, 14, 15.

[15] LLC Agreement at 15.

[16] PTO ¶ 12. GimCo is authorized to make two appointments to the Board, but it has only ever appointed Gimbel. Capone JV is authorized to make three appointments, but it has only ever appointed Hegenbart and Harned.

[17] LLC Agreement § 8.02(a)(i).

[18] LLC Agreement § 8.02(a)(ii). Hegenbart and Harned are not officers or employees of Holdco; they serve only as Sponsor Managers on Holdco's Board. Pls.' Pretrial Br. ("POB") 6, Dkt. 91.

B. Holdco's Structure

Holdco does not purport to be member-managed or manager-managed.[19] The drafters appear to have created a hybrid.[20] Holdco is "managed, operated, and controlled via Approval."[21] "Approval" is defined as "an authorized action of the Company approved in person or via written approval by either (i) a majority in interest of the Series A Units and Series B Units, voting as a single class, pursuant to Article IV or (ii) the Board pursuant to Article VIII."[22] The Court examined these two forms of Approval closely to understand the nature of Plaintiffs' positions vis-à-vis Holdco and to assess their inspection rights.[23]

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[19] *See* 6 *Del. C.* § 18-402 ("[T]he management of a limited liability company shall be vested in its *members* in proportion to the . . . interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than 50 percent of the . . . interest in the profits controlling[,]" or vested in its *manager(s)* "if a limited liability company agreement provides [so.]") (emphasis added); *see also* Robert L. Symonds, Jr. & Matthew J. O'Toole, *Symonds & O'Toole on Delaware Limited Liability Companies* ("O'Toole") § 9.01[B][2] (2d ed. 2025) (Where a limited liability company agreement provides that the company is managed "in whole or in part, by one or more managers[,]" management "is vested, to the extent so provided, in those designated persons.").

[20] *See* 6 *Del. C.* § 18-1101(b) ("It is the policy of [the Delaware Limited Liability Company Act (the "LLC Act")] to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.").

[21] LLC Agreement § 8.01.

[22] LLC Agreement at 7.

[23] *See* O'Toole § 9.04[A][1][a] ("The [LLC] Act offers broad contractual freedom not only to apportion management authority among a variety of persons *but also* to

1. Member Approval

The LLC Agreement gives Capone JV—the member holding a majority in interest of Holdco's voting units[24]—the right to manage and bind Holdco through Approval. Section 4.09 of the LLC Agreement states: "Except as otherwise specifically provided by this Agreement or required by the Delaware Act, no Member, in its capacity as a Member, shall have the power to act for or on behalf of, or to bind, the Company without Approval."[25] Capone JV can obtain Approval at any time, acting by written consent or outvoting the Series A at a meeting.[26] Section 4.09 also provides that, if Capone JV's desire conflicts with the Board's, the conflict is resolved in favor of Capone JV:

> [I]n the event that any matter is submitted to the Board and the holders of Voting Units for Approval and a conflict arises between the Approval or non-Approval of such matter by the Board and the

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establish the nature and extent of the management rights and powers granted to them. Parties to the limited liability company agreement thus can provide as little or as much management authority, narrow or broad in scope, to whomever they choose.").

[24] *See* LLC Agreement Schedule A.

[25] LLC Agreement § 4.09.

[26] LLC Agreement § 4.08 ("[A]ny matter that is to be voted on, consented to or approved by Voting Members may be taken without a meeting, without prior notice and without a vote if consented to, in writing or by Electronic Transmission, by a Member or Members holding not less than a majority of the outstanding Voting Units held by all Members. A record shall be maintained by the Company of each such action taken by written consent of a Member or Members.").

> holders of a majority in interest of the Voting Units, the vote of the majority in interest of the Voting Units [(*i.e.*, Capone JV)] shall control.[27]

2. Board Approval

The Holdco Board can also generate Approval, in two ways. First, the Board may act at a meeting, so long as quorum is established.[28] Under Section 8.06(a) of the LLC Agreement, "[a] majority of the Managers serving on the Board shall constitute a quorum for the transaction of the Board; *provided, however*, that the presence or participation of at least two (2) Sponsor Managers and one (1) GimCo Manager is required to constitute a quorum."[29]

Section 8.06 gives each manager one vote on matters presented to the Board.[30] "[T]he act of a majority of the Managers constituting a quorum shall be the act of the Board[.]"[31] For an action of the Board to constitute Approval, however, "the affirmative vote of at least two (2) Sponsor Managers shall be

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[27] LLC Agreement § 4.09.

[28] The Board determines when it will meet. *See* LLC Agreement § 8.05(a). The Board met three times in 2024 and three times in 2025. *See* Gimbel Dep. 24:19–25; 44:18–24. The record does not reveal how this number compares to 2022 and 2023.

[29] LLC Agreement § 8.06(a).

[30] LLC Agreement § 8.06(c).

[31] LLC Agreement § 8.06(c).

required[.]"[32] In sum, all three members of the Board must attend a meeting to satisfy quorum, but it is possible for the Sponsor Managers to outvote Gimbel if they wish to do so, and the Sponsor Managers will decide every issue that requires Approval. The GimCo Manager cannot vote with one of the other managers and obtain Approval.[33]

Second, the Board may act by written consent. Section 8.07 states that "any action of the Board may be taken without a meeting if approved via a written consent of the number of Managers required to approve such action at an in-person meeting."[34] Under Section 8.06, the vote of a majority of Managers constitutes Approval so long as the vote contains "the affirmative vote of at least two (2) Sponsor Managers[.]"[35] Accordingly, "the Board" may act by written consent whenever both Sponsor Managers desire and, it appears, without Gimbel's involvement.

The Court concludes from the foregoing provisions that the Sponsor Managers and Gimbel have materially different authority and responsibility

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[32] LLC Agreement § 8.06(c).

[33] *See* O'Toole § 9.04[A][1][e] ("[T]he limited liability company agreement may provide for the taking of a particular action without the vote, consent, or approval of any member or manager or class or group of members or managers, even if that person, class, or group ordinarily enjoys voting rights.").

[34] LLC Agreement § 8.07.

[35] LLC Agreement § 8.06(c).

for managing Holdco.[36] It is largely possible for the Sponsor Managers to manage the entity without obstruction from Gimbel.[37]

C. The Change in Gimbel's Status

After Infinedi acquired its interest in LaSalle, through Holdco, Gimbel continued to serve as LaSalle's CEO for approximately two years.[38] During that period, Gimbel argues, "the LaSalle leadership team, Mr. Gimbel, and the Sponsor Managers [of Holdco] met weekly."[39] Between 2022 and early 2024, Gimbel contends that he, "as well as the Sponsor Managers, and an Infinedi employee . . . , would receive a weekly management report and dashboard from LaSalle's [CFO], Lawrence Casas, with Ryan Chabus, the controller, copied."[40]

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[36] *See* 6 *Del. C.* § 18-404(a); *see also* O'Toole § 9.04[A][1][c] ("A class, group, or series of members, managers, or other persons may enjoy management and voting rights and powers that are different from or additional to those of persons who do not belong to that class, group, or series.") (citations omitted).

[37] *See* O'Toole § 9.04[B][1] ("Responsibilities for management of the limited liability company may be apportioned between and among members, managers, and others as the parties to the limited liability company agreement see fit. For example, some persons may have no duties whatsoever in regard to management; others may be responsible for managing the company 'in part' only; in some cases, general management duties may reside entirely within a single person.").

[38] PTO ¶ 7.

[39] POB 7 (citing Gimbel Dep. 85:9–13).

[40] POB 9.

Since his termination as CEO of LaSalle, Gimbel has received far less information about LaSalle's operations. Hegenbart and Harned meet weekly with LaSalle's new CEO, Zach Vogel, and Gimbel is not included.[41] Instead of sending routine management reports and other materials directly to Gimbel, LaSalle sends them through Dan Conlon, an Infinedi employee, which results in a delay.[42] Gimbel has asked both Holdco and LaSalle to provide contemporaneous access, but they have declined.[43]

Gimbel's primary complaints are that decisions have been made without him and that he has learned about developments at LaSalle after the fact. Among those decisions and developments are:

- After Harned represented to Gimbel that Holdco would make a tax distribution in the first quarter of 2025,[44] Capone JV decided not to do so, and Gimbel contends that nobody has explained the basis for the decision.[45]

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[41] *See* POB 15; *see also* Tr. of Video-recorded Dep. of Zachary Vogel ("Vogel Dep.") 92:14–94:3, Dkt. 64 Ex. 2.

[42] *See* POB 9–11.

[43] POB 11. Gimbel has asked the Court to order contemporaneous access to information going forward.

[44] JX47 at 2.

[45] *See* JX48 at 3. Gimbel did not object to the decision to withhold a distribution but took issue with the lack of communication. JX48 at 1–2. Defendant argues that at least some explanation was provided in an email dated May 1, 2025. Def.'s Answering Pretrial Br. ("DAB") 5, Dkt. 96; JX54 at 2.

- Gimbel was not invited to participate in the search for or hiring of his replacement as CEO.[46] Gimbel requested updates from Holdco on the hiring process but did not receive any.[47] Gimbel contacted Vogel after he was hired as CEO, but Vogel did not respond.[48]
- Vogel did not tell Gimbel that LaSalle's CFO, Lawrence Casas, would be terminated, but Vogel did discuss the impending termination with the Sponsor Managers.[49] Gimbel learned of the termination from Casas, but he did not hear the information from Vogel until the May 2025 board meeting, two months after the fact.[50]
- Gimbel was not informed that LaSalle's former controller, Ryan Chabus, resigned until after the fact.[51]
- Gimbel only learned that a new controller had been hired through discovery in this action.[52]

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[46] POB 11–12.

[47] POB 11–12.

[48] POB 12–13.

[49] POB 15–16.

[50] POB 15–16; *see also* Vogel Dep. 123:9–13.

[51] POB 16–17.

[52] POB 17.

- Gimbel was not invited to participate in discussions with Vogel and the Sponsor Managers before LaSalle laid off "a significant number of other LaSalle . . . employees."[53]

The LLC Agreement states that "[t]he Board shall meet at such time and at such place as the Board may designate."[54] In December 2024, Infinedi employee Dan Conlon informed Gimbel that the scheduled December Board meeting had been cancelled.[55] Since then, Gimbel's participation at Board meetings has been limited.[56] Hegenbart and Harned meet with Vogel weekly to consult on LaSalle's business and affairs, and Gimbel is not included.[57] Vogel testified that these discussions concern Vogel's handling of LaSalle's day-to-day operations.[58] Vogel testified that these routine meetings are "not board meetings . . . [but] an opportunity for [Vogel] to get advice from trusted advisors, and Mr. Gimbel's not there."[59]

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[53] POB 18.

[54] LLC Agreement § 8.05(a).

[55] POB 14.

[56] POB 20–21.

[57] Vogel Dep. 92:14–94:3.

[58] *See* Vogel Dep. 96:17–97:15.

[59] Vogel Dep. 96:24–97:3.

D. The Demand

Dissatisfied with their lack of information, Plaintiffs Gimbel and GimCo sent a demand to inspect books and records to Holdco on June 13, 2025 ("Demand"). The Demand asserts inspection rights under Section 18-305 of the LLC Act and Section 12.02 of the LLC Agreement.[60] Gimbel acknowledges that he receives some financial materials from Holdco but argues that he "does not receive financial information at the same time as the other Managers and does not receive all of the financial information and other Manager-level information shared with the other Managers."[61] The Demand also challenges Gimbel's exclusion from employment-related matters.[62]

Gimbel's inspection rights are alleged to arise under Section 18-305 of the LLC Act. Gimbel makes a status-based argument; namely, that as a Holdco manager, he is entitled to unfettered access to all Company books and records.[63] GimCo's rights—as a Holdco member—are alleged to arise under both Section 18-305 of the LLC Act and Section 12.02 of the LLC Agreement.[64]

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[60] *See* JX64 ("Demand").

[61] Demand at 3.

[62] *See* Demand at 3.

[63] Demand at 3.

[64] Demand at 4–5.

The Demand states separate purposes for Gimbel's and GimCo's inspection requests.[65] For Gimbel, the first purpose is "to carry out his management duties, including understanding the current business of the Company, the hiring of the new CEO of LaSalle Network, and the decision not to issue tax distributions."[66] The second is "to ensure that the other members of the Board are not acting in a self-interested manner or failing to adequately discharge their duties to [Holdco]."[67] On behalf of GimCo, the Demand states the purpose of valuing GimCo's interest in Holdco.[68]

The Demand requests a diverse range of books and records, organized into 10 categories and 33 subcategories.[69] Many of the requests are for "Board Documents" and "Board Communications," which are defined terms of

[65] *See* Demand at 3.

[66] Demand at 3.

[67] Demand at 3.

[68] Demand at 3.

[69] *See* Demand at 5–9. Holdco produced several rounds of records. By the time of trial, the dispute had narrowed to ten discrete categories of records. *See* POB 32–33.

Plaintiffs' creation.[70] Holdco responded to the Demand on August 22, 2025, describing the categories of records it would provide.[71] Holdco asserted that nine of the requested categories of books and records do not exist.[72]

On September 8, Plaintiffs responded to Holdco's letter. Plaintiffs noted that Holdco had not yet produced the books and records it stated it would.[73] Plaintiffs challenged Holdco's failure to address Gimbel's request to receive documents contemporaneously with the Sponsor Managers.[74] Plaintiffs expressed skepticism that several categories of books and records do not exist,[75] and they argued that if responsive books and records are available only from Infinedi, Holdco must collect and provide those records.[76]

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[70] *See* Demand at 5–9. The definitions are described later in this report.

[71] *See* JX84 at 1–2.

[72] JX84 at 2.

[73] JX88 at 1–2.

[74] JX88 at 2–3. Gimbel also took issue with Holdco's failure to respond to his demand that he not be muted during Board meetings. JX88 at 2. The Court did not intend to hear these issues in the records inspection phase of the litigation. Dkts. 11, 83. Nevertheless, Plaintiffs did obtain testimony explaining the reason attendees were muted at Vogel's first Board meeting. Vogel testified that he did this only once, and that he did so because this had been his experience and practice before joining LaSalle. Vogel Dep. 82:23–84:14.

[75] JX88 at 5.

[76] JX88 at 5. This issue was the subject of one or more discovery motions, which are discussed later in this report.

On September 19, Holdco voluntarily produced materials responsive to Plaintiffs' Demand.[77] Plaintiffs contend that the production is deficient because Holdco did not "search" the Sponsor Managers' emails or produce "informal" board materials.[78] Plaintiffs also contend that their request to inspect "pre-termination" records would be "largely moot[ed]" if Holdco would produce the contents of Gimbel's old LaSalle email account.[79]

E. Post-Demand Developments

1. Discovery Motions

Plaintiffs filed this action on July 3, 2025. The Complaint contained four counts: two seeking to inspect records and two seeking a declaratory judgment concerning contractual rights under the LLC Agreement.[80] Shortly after Plaintiffs filed the action, the parties proposed a case schedule contemplating a trial approximately 100 days after the date of the

[77] POB 28; DAB 20.

[78] POB 28.

[79] POB 34. Gimbel lost access to his emails when he was terminated from LaSalle.

[80] The declaratory judgment counts asserted Gimbel's right as a manager to not be muted at Board meetings and his right as a GimCo representative to communicate with officers and senior employees of Holdco and LaSalle. *See* Compl. ¶¶ 64–76.

Complaint.[81] The Court scheduled the trial two months later than the parties requested.[82]

Three weeks later, Plaintiffs filed their first motion to compel discovery.[83] Over the next two months, Plaintiffs would file a second motion to compel and serve a subpoena on Infinedi,[84] Defendant would file three discovery motions of its own,[85] and Infinedi would file a motion to quash and for a protective order.[86] On October 27, the Court informed the parties that the December trial would address only the records inspection counts[87] and ruled on the six discovery motions.[88]

One issue Plaintiffs raised in discovery bears mention here – their request to access the Sponsor Managers' communications on Infinedi servers. Plaintiffs contended that Defendant's discovery efforts were deficient because

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[81] *See* Dkt. 6.

[82] Dkt. 11.

[83] *See* Dkt. 19.

[84] Dkt. 42 ¶ 12; Dkt. 67. Plaintiffs filed their second motion to compel after the close of fact discovery. *See* Dkt. 11.

[85] Dkts. 44, 59, 70. Defendant filed its first motion on the last day of fact discovery and the latter two after the close of fact discovery. *See* Dkt. 11.

[86] Dkt. 42.

[87] *See* Dkt. 78 ¶ 1 ("This case is not just a books and records case.").

[88] Dkts. 83–89. The Court denied the parties' motions to compel; it granted Infinedi's motion to quash and Defendant's motion for a protective order.

Defendant did not conduct a search for records on Infinedi's servers.[89] Plaintiffs argued that all of Hegenbart's and Harned's emails are sent from an Infinedi address, and some may reflect the performance of managerial duties for Holdco.[90] In opposition, Holdco argued that it did not have control over Infinedi's servers.[91] It also argued that it would be burdensome to sift through communications to find those that reflect the exercise of managerial duties on behalf of Holdco but are not otherwise available.[92]

Both parties' perspectives had merit. Among other reasons, the Court denied Plaintiffs' request because access to informal communications, not to mention third party servers, is not automatic; sifting through communications of people who act in multiple capacities could be burdensome and expensive; and the Court had no basis to conclude that Defendant's production was insufficient to satisfy whatever inspection rights Plaintiffs might have.[93] In this report, the Court explains when an inspection of Infinedi servers may be warranted.

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[89] Dkt. 28 at 6–8.

[90] Dkt. 28 at 6–8. Plaintiffs were willing to accept a search for emails that involved both Hegenbart and Harned. Dkt. 28 at 6–8.

[91] Dkt. 35 ¶¶ 11–13.

[92] *See* Dkt. 28 Ex. 16, at 7–8.

[93] *See* Dkt. 84.

2. Potential Acquisition and Share Issuance

At his deposition, Vogel testified that Holdco had sent "indications of interest regarding potential business combinations" to the DeWinter Group and that Holdco had received "financial information and other things" from "DeWinter Group and their equity sponsors."[94] On November 19, Gimbel asked Vogel to provide information regarding a possible "DeWinter acquisition."[95] On November 24, Vogel provided a letter of intent that Infinedi had conveyed to the DeWinter Group.[96]

On November 20, Holdco sent GimCo a "notice of a unit issuance planned for December 19, 2025[.]"[97] The notice gave GimCo ten days to exercise its preemptive rights.[98] Gimbel argued that he did not have sufficient information to make a decision and asked Holdco to postpone the planned issuance.[99] Between November 24 and December 9, Gimbel repeatedly requested additional information from Defendant and Vogel.[100] Some information emerged over the course of the communications, including that

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[94] Vogel Dep. 190:20–191:7, 191:24–192:9.

[95] JX108 at 1.

[96] Pls.' Reply Pretrial Br. ("PRB") 4–5, Dkt. 99; *see also* JX108 at 1.

[97] PRB 1.

[98] PRB 4 (citing JX106 at 2).

[99] Pls.' Suppl. Br. ("PSB") 2–3, Dkt. 108.

[100] PSB 2–9.

one or more of the relevant entities heard a presentation from DeWinter Group's management in August 2025[101] and that the equity issuance had been approved by Capone JV, by written consent, on November 20.[102] The communications illustrate the parties' opposing arguments. Gimbel argued that the capital raise was a Board issue, and he deserved to receive the same information as the Sponsor Managers.[103] Defendant argued that the GimCo Member received what it was entitled to receive at the appropriate time.[104]

On December 9, Vogel informed Gimbel that the terms of the planned issuance had been revised and that the 10-business-day period for GimCo to consider its position had begun anew.[105] Gimbel again argued that information was being improperly withheld from him as a Board member: "'[N]ot only ha[s] Mr. Gimbel not been copied on any communication regarding the acquisition transaction, Mr. Gimbel never received any of the purchase transaction documents, any financial information or any financial

[101] *See* JX112. This fact was revealed on November 28. PSB 4.

[102] *See* JX116 at 4, 6–7. This fact was revealed on December 4. PSB 7.

[103] *See, e.g.*, PSB 2 ("Mr. Gimbel further articulated that such a significant capital raise 'should be report[ed] to the board[.]'"); PSB 4 ("'[Y]ou have an obligation to share all material communications that you have received from [Infinedi] with me in real time' and . . . 'I expect you to provide me with regular updates … without my having to ask[.]'").

[104] *See, e.g.*, JX106 at 2; JX116 at 4.

[105] PSB 7–8; JX 118 at 2.

models related to the acquisition transaction, or any other diligence materials."[106] Gimbel also argued that the new terms implied an unexplained "drop in valuation from $51 million to $34 million."[107] In its final brief before trial, Defendant argued that the revised December 9 notice of issuance mooted the parties' prior discussions.[108]

The Court addresses the inspection of records relating to transactions arising between the date of the Demand and the date of this report in a later section of the report.

F. The Trial

On December 18, the parties tried the case on a paper record.[109] Defendant argued that its voluntary production mooted the action.[110] Plaintiffs disagreed, arguing that they were entitled to inspect additional

[106] PSB 8–9 (citing JX119 at 1–2).

[107] PSB 9 (citing JX119 at 2).

[108] Def.'s Suppl. Br. ("DSB") 3, Dkt. 109.

[109] Dkt. 116. The Court offered to hear in-person witness testimony at trial but the parties declined. Dkt. 106.

[110] Dkt. 116.

records and that the question of Gimbel's ongoing, contemporaneous access to all materials available to the Sponsor Managers remains in dispute.[111] The Court took the matter under advisement at the close of trial.[112]

G. Post-Trial Filings

Plaintiffs filed three letters after trial, discussing factual developments and attaching new documents.[113] For example, on February 5, 2026, Plaintiffs briefed the Court on multiple subjects, including that Gimbel still was not receiving contemporaneous access to Holdco's books and records, and attached over 70 pages of internal records and correspondence.[114] On June 17, Plaintiffs informed the Court that Gimbel was not involved in the hiring of a new CFO, that the DeWinter acquisition and the prior plan to raise capital were no longer proceeding, and that no tax distribution would be made.[115]

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[111] *See, e.g.*, DAB 50–51; PRB 6.

[112] Dkt. 116.

[113] *See* Dkts. 122, 126, 129.

[114] Dkt. 122.

[115] Dkt. 126. This letter attached a small amount of correspondence. In Plaintiffs' July 31 letter, they primarily expressed concern about the delay in the Court's decision but also noted Defendant's continued delay in providing information to Gimbel. Dkt. 129.

In response to each of Plaintiffs' post-trial letters, Defendant asked the Court to strike the submissions or to allow Defendant to respond and supplement the record as well.[116] Defendant argued that the unsolicited submissions effectively reopened the trial record without leave of Court.[117]

II. LEGAL STANDARDS

There are two sets of inspection rights at issue in this case: (1) Gimbel's, under the LLC Act, and (2) GimCo's, under Holdco's LLC Agreement.[118] In this report, the Court finds that in light of the scope of records requested, and his demand for access to records and information equal to that of Hegenbart and Harned, Gimbel has not stated a proper purpose for inspection. The Court finds that GimCo may be entitled to inspect a limited number of additional records as described later in this report.

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[116] *See* Dkts. 123, 127, 130.

[117] *See* Dkts. 123, 127, 130. The Court has not stricken Plaintiffs' post-trial filings, but it agrees with Defendant that the Court cannot fairly consider them without providing Defendant the opportunity to respond and submit additional records, if necessary. The Court has not relied on Plaintiffs' post-trial letters or supporting records in connection with this report.

[118] Demand at 3–4. GimCo also presented an argument based on Section 18-305 of the LLC Act. GimCo's argument fails for reasons explained in this report, but if it had not, the Court would not have ordered the inspection of additional records on the facts of this case. GimCo's statutory inspection right would likely reach a narrower scope of records than its right under the LLC Agreement.

A. LLC Managers' Statutory Inspection Rights

Under Section 18-305(b) of the LLC Act, "[e]ach manager shall have the right to examine all of the information described in subsection (a) of this section for a purpose reasonably related to the position of manager."[119] Thus, a manager seeking to examine the information described in Section 18-305(a) must be able to establish "[t]hat the information the demanding . . . manager seeks is reasonably related to . . . the manager's position as a manager[.]"[120] "A manager seeking to inspect books and records makes out a *prima facie* case by showing: (i) [he] is a manager; (ii) [he] requested company books and records; (iii) the books and records are reasonably related to [his] purpose as a manager; (iv) [his] request was within the scope of information rights afforded to [him] under the limited liability company [statute or] agreement; and (v) [his] request was refused."[121]

The LLC Act allows drafters to create unique management structures, in which an entity's managers can each have distinct rights and responsibilities.[122] Thus, although the Court is addressing Gimbel's statutory

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[119] 6 *Del. C.* § 18-305(b).

[120] 6 *Del. C.* § 18-305(f)(2).

[121] *Bruckel v. TAUC Hldgs., LLC*, 2023 WL 116483, at *1 (Del. Ch. Jan. 6, 2023) (citing *In re P3 Health Grp. Hldgs., LLC*, 2022 WL 16548567, at *29 (Del. Ch. Oct. 31, 2022)).

[122] *See* 6 *Del. C.* § 18-404(a), (b).

inspection right, the Court has considered how Gimbel's role is actually structured in the governing LLC Agreement to assess whether Gimbel's requests were made "for a purpose reasonably related to the position of manager."

B. LLC Members' Contractual Inspection Rights

Where a member of an LLC asserts solely contractual inspection rights,[123] this Court's analysis proceeds differently.[124] The Court must attempt to effectuate the parties' intent.[125] "[W]here a provision in [an LLC] agreement appears on its face to create a right separate and independent from a statutory right or a right granted in another section of the [LLC] agreement, the [LLC] agreement must explicitly state that the provision is merely clarifying or placing additional conditions on the other statutory or contractual right if in fact that is the provision's intended purpose. Otherwise, this Court will conclude that the parties intended the provision to create the separate and independent contractual right that the provision on its face purports to

[123] *See* 6 *Del. C.* § 18-305(g); *see also* O'Toole §§ 9.04[A][1],[B][1].

[124] *See In re Paine Webber Qualified Plan Prop. Fund Three, L.P. Litig.*, 698 A.2d 389, 392 (Del. Ch. 1997); *see also Arbor Place, L.P. v. Encore Opportunity Fund, L.L.C.*, 2002 WL 205681, at *5–6 (Del. Ch. Jan. 29, 2002).

[125] *See Murfey v. WHC Ventures, LLC*, 236 A.3d 337, 350 (Del. 2020) (quoting *United States v. Sanofi-Aventis U.S. LLC*, 226 A.3d 1117, 1129 (Del. 2020)).

create."[126] In other words, it is permissible to change or displace the default inspection rights in the LLC Act through the terms of an LLC agreement, but the Court must assess the provisions in each case to make that determination.

III. ANALYSIS

A. Gimbel's Status-Based Arguments Are Inapposite.

Gimbel makes two simple arguments in support of his request to inspect additional records. First, that managers of LLCs must have "essentially unfettered" access to information,[127] and second, that managers of LLCs must be given equal access to information.[128] It is true that this Court has relied on both principles when deciding records inspection actions, but it has done so in cases that involve materially different facts.

For example, in *RED Capital Investment L.P.*, the defendant's LLC agreement vested only its board of managers with management authority.[129] The LLC agreement conferred upon the board "the broadest possible authority to manage the business and affairs of the [c]ompany[.]"[130] It did not, as here,

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[126] *Bond Purchase, L.L.C. v. Patriot Tax Credit Props., L.P.*, 746 A.2d 842, 855 (Del. Ch. 1999).

[127] *See, e.g.*, *RED Cap. Inv. L.P. v. RED Parent LLC*, 2016 WL 612772, at *4 (Del. Ch. Feb. 11, 2016).

[128] POB 47–48.

[129] *See* Pls.' Pretrial Br. Ex. A. §§ 5.1–5.2, *RED Cap. Inv. L.P. v. RED Parent LLC*, C.A. No. 11575-VCS (Del. Ch. Feb. 11, 2016), 2016 WL 612772, at *1.

[130] *Id.* § 5.2(b).

provide that the Company is "managed, operated and controlled" by Approval and create classes of managers with significantly different ability to obtain Approval. The defendant's LLC agreement also does not appear to have waived the managers' fiduciary duties.[131]

The plaintiff in *RED Capital Investment L.P.* was a manager of the LLC, who issued an inspection demand to the LLC for the purpose of "understand[ing] the current cash financial position at [a subsidiary][.]"[132] The plaintiff argued that "[the subsidiary] may be facing an imminent cash crisis," and contended that he had fiduciary obligations as a manager "to diligently reassure [himself] that all of the assets are solvent and stable."[133] The Court found that the plaintiff was entitled to inspect records "to discharge his managerial fiduciary duties" and that he had stated a proper purpose.[134]

Similarly, in *Obeid v. Gemini Real Estate Advisors, LLC*, the court found a manager of the LLC to be entitled to an "essentially unfettered" right of access to the defendant's books and records.[135] Again, management authority was vested in a board of managers and the managers retained

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[131] *See id.* §§ 5.1–5.11, 8.1–8.3.

[132] 2016 WL 612772, at *2.

[133] *Id.*

[134] *Id.* at *5.

[135] 2018 WL 2714784, at *4 (Del. Ch. June 5, 2018).

fiduciary duties.[136] In granting the plaintiff's inspection request, the Court explained that the plaintiff "is a fiduciary and in order to meet his obligation as such he must have access to books and records; indeed he often has a duty to consult them."[137]

The foregoing cases illustrate why the Court finds that Gimbel's requests are not made for a proper purpose. Managerial authority is not vested in Holdco's Board in the same way authority was vested in the respective boards of RED Parent LLC and Gemini Real Estate Advisors, LLC. "Management," for Gimbel, appears to mean participating in Board meetings three times per year. Gimbel did not argue that he is deprived of the information needed to participate at Board meetings; he agreed that he receives those materials.[138] Demanding contemporaneous, unfettered access to records on the basis of Gimbel's status as a manager is insufficient here because Gimbel's managerial authority differs from the other managers' authority. Another difference between the cases Gimbel cites and this case is that Holdco's LLC Agreement allows Holdco managers to act in their own interest and eliminates their fiduciary duties. Thus, stating an intention to

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[136] *Id.*

[137] *Id.* (quoting *Henshaw v. Am. Cement Corp.*, 252 A.2d 125, 128 (Del. Ch. 1969)).

[138] *See* Gimbel Dep. 25:6–8 ("Q. Are materials provided to you in advance of the board meetings? A. Yes.").

ensure that other managers do not act in a self-interested manner or fail to discharge their duties to the Company is insufficient to establish a proper purpose here.

Given Holdco's structure and governance terms Gimbel has not proved that he must have unfettered access to Holdco's books and records "if he reasonably can be expected to perform his [fiduciary] duties."[139] Likewise, there is no basis to conclude that Gimbel must receive "whatever the other managers are given."[140]

B. Gimbel Has Not Established a Proper Purpose for Inspection Under the LLC Act.

Gimbel is a manager of Holdco—the "GimCo Manager." The LLC Agreement does not give inspection rights to the GimCo Manager. Any inspection rights Gimbel has must come from Section 18-305 of the LLC Act.

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[139] *Cf. Bizzari v. Suburban Waste Servs., Inc.*, 2016 WL 4540292, at *8 (Del. Ch. Aug. 30, 2016) (citing *Holdgreiwe v. Nostalgia Network, Inc.*, 1993 WL 144604, at *3 (Del. Ch. Apr. 29, 1993)); *Bruckel*, 2023 WL 116483, at *4 ("Managers are fiduciaries, and in order to meet their obligations as such, they must have access to the company's books and records; indeed, they often have a duty to consult them.") (citation modified).

[140] *Cf. Bruckel*, 2023 WL 116483, at *4 ("As long as a sitting manager owes fiduciary duties, she is entitled to receive whatever the other managers are given.") (citing *P3 Health Grp. Hldgs., LLC*, 2022 WL 16548567, at *29).

Gimbel concedes that he must prove that he seeks to inspect records for a purpose reasonably related to his position as a manager.[141] The Court concludes that Gimbel has not met his burden.

1. Gimbel's Role Comes With Limited Managerial Authority And Carries No Fiduciary Duties.

Gimbel's role as a manager is unique.[142] He generally lacks authority to act on behalf of Holdco.[143] Gimbel's decision-making powers may be exercised at Board meetings, which may only be called with the consent of

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[141] POB 49–51. *See also RED Cap. Inv. L.P.*, 2016 WL 612772, at *4 (finding that because the manager "has stated a proper purpose—i.e., to 'understand the current cash financial position at RED' in order to discharge his managerial fiduciary duties—he is entitled to inspection of the information requested").

[142] *See* LLC Agreement §§ 8.02(a), 8.06, 8.07.

[143] *See* LLC Agreement § 4.09. "No action may be taken by the Members at any meeting at which a quorum is present without the affirmative vote of Members holding a majority of the outstanding Voting Units held by all Members." *Id.* § 4.07. "[A]ny matter that is to be voted on, consented to or approved by Voting Members may be taken without a meeting, without prior notice and without a vote if consented to, in writing or by Electronic Transmission, by a Member or Members holding not less than a majority of the outstanding Voting Units held by all Members." *Id.* § 4.08. "[T]he affirmative vote of at least two (2) Sponsor Managers shall be required for any and all actions of the Board to constitute Approval. In the event of a deadlock in any vote or consent of the Board, such deadlock shall be submitted to a vote by the holders of Series A and Series B Units and shall be resolved in the manner approved by the vote of the majority in interest of the Series A and Series B Units, voting as a single class." *Id.* § 8.06(c). "[A]ny action of the Board may be taken without a meeting if approved via a written consent of the number of Managers required to approve such action at an in-person meeting." *Id.* § 8.07.

the Sponsor Managers.[144] The Board does meet several times per year, and Gimbel receives the materials associated with those meetings.[145] The entity is "managed, operated and controlled via Approval."[146] The other managers may vote together to obtain Approval, but the vote of Gimbel and either other manager is insufficient to obtain Approval.[147] The other managers may act by written consent to obtain Approval, bypassing Gimbel altogether.[148] The only action that *requires* Gimbel's consent is one that would "material[ly] change . . . the Business of the Company[.]"[149]

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[144] *See* LLC Agreement §§ 8.05(a), 8.06(c), 8.07. Gimbel is entitled to receive appropriate and timely information when called upon to vote at a meeting, and he does not contend that the Company has failed to provide such information. *See* Gimbel Dep. 25:6–8 ("Q. Are materials provided to you in advance of the board meetings? A. Yes.").

[145] *See* Gimbel Dep. 24:19–25; 44:18–24.

[146] LLC Agreement § 8.01.

[147] *See* 6 *Del. C.* § 18-404(a); O'Toole § 9.04[A][1][a] ("Parties to the limited liability company agreement . . . can provide as little or as much management authority, narrow or broad in scope, to whomever they choose. Different members and managers, or classes, groups, or series of members and managers, or other persons, may have similar and/or dissimilar rights and powers relative to each other.") (citations omitted).

[148] *See* LLC Agreement §§ 8.06(c), 8.07. This means that the Sponsor Managers can act "without the meaningful participation of" Gimbel. *See P3 Grp. Hldgs., LLC*, 2022 WL 16548567, at *32.

[149] LLC Agreement § 2.05. Gimbel has not alleged, and the record does not reflect, that Holdco has taken steps to materially change the business of Holdco since Gimbel's termination as CEO of LaSalle.

2. Gimbel's Stated Purposes for Inspection Are Not Reasonably Related to His Position as a Manager.

Gimbel states two purposes for inspection in the Demand: (1) "to carry out his management duties, including understanding the current business of the Company, the hiring of the new CEO of LaSalle Network, and the decision not to issue tax distributions[;]" and (2) "to ensure that the other members of the Board are not acting in a self-interested manner or failing to adequately discharge their duties to the Company."[150] Holdco argues that Gimbel's requests exceed his authority under the LLC Agreement and therefore are not reasonably related to his position as a manager.[151] The Court agrees.

Gimbel's first purported purpose for inspection is "to carry out his management duties." Under some circumstances, this is a proper purpose for inspection. It is not a proper purpose for Gimbel here. The records Gimbel seeks are broader than necessary to carry out his management duties. Gimbel's management duty consists of participating in Board meetings when called. But Gimbel did not argue that he lacks information needed to

[150] Demand at 3.

[151] *See, e.g.*, DAB 38–41; JX83 at 7–8 (stating that Gimbel "appears to seek to continue exerting micro-managerial levels of access, involvement, and false apparent executive authority in [Holdco] despite not being entitled to such information or authority under the [LLC] Agreement, which is not a proper purpose or one reasonably related to his position as a Manager under Delaware law.").

participate effectively in Board meetings, he argued that he is entitled to the same access the other managers have. Based on the broad range of records he requested, the Court concludes that Gimbel's true purpose is to serve a personal interest – to maintain access to the same scope of information he had when he was the CEO of LaSalle.

Gimbel is correct that, in *Bruckel*, this Court stated that "[t]he best proxy for what is reasonably related to [the plaintiff's] status as a manager 'is what the other managers are being given and documents that reflect how the other managers meet and act collectively do their jobs.'"[152] The Court also notes that *Bruckel* referred to the plaintiff's "status" as a manager more than once.[153] But the Court also expressly tied the "other manager as proxy" rationale to the fact that "managers [meet and act] collectively to do their jobs"[154] and that they owe fiduciary duties.[155] The facts in this case differ.

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[152] 2023 WL 116483, at *2 (citation omitted).

[153] *Id.*

[154] *Id.* at *1 ("Plaintiff is a 'Founder Member' and manager of TAUC, which is managed by a board of managers[.]"). The board of managers was vested with complete and exclusive governing authority. *Id.* at *4.

[155] *Id*. at *4 ("As long as a sitting manager owes fiduciary duties, she is entitled to receive whatever the other managers are given.")(citing *In re P3 Health Grp. Hldgs., LLC*, 2022 WL 16548567, at *29 (Del. Ch. Oct. 31, 2022)).

Most of the examples of exclusion that Gimbel raised are unrelated to acts of the Holdco Board. Most relate to actions taken by LaSalle or Capone JV.[156] The decision not to inform Gimbel about LaSalle's actions appears to have been made by Vogel or Vogel and his management team.[157] When Capone JV obtains Approval through the authorized process, its decision is binding on Holdco.[158] Holdco's managers need not be consulted or notified before Capone JV takes action.[159] Thus, for example, Gimbel's request to inspect all books and records relating to an authorized act that Capone JV has taken by written consent (*e.g.*, to not make a tax distribution in 2025) does not demonstrate a purpose reasonably related to his position as manager or his managerial duties.[160]

Gimbel also failed to establish that his second stated purpose for inspection, "to ensure that the other members of the Board are not acting in a self-interested manner or failing to adequately discharge their duties to the Company," is a proper purpose. First, Gimbel did not suggest that the other

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[156] *See* JX13; JX48; JX51; JX60; JX77.

[157] *See, e.g.*, Vogel Dep. 53:12–21, 123:14–17, 123:21–124:25.

[158] *See* LLC Agreement § 4.08 ("[A]ny matter that is to be voted on, consented to or approved by Voting Members may be taken without a meeting, without prior notice[.]").

[159] *See* LLC Agreement § 4.08.

[160] *See* LLC Agreement §§ 4.08, 4.09.

managers have failed to discharge any duties, aside from the alleged duty to provide more and contemporaneous information to Gimbel.[161] Second, the LLC Agreement expressly permits managers to make self-interested decisions. Section 14.02(b) states that when making decisions, Covered Persons, a group that includes Managers,[162] may "consider only such interests and factors as such Covered Person desires, including [their] own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting [Holdco] or any other Person."[163]

Gimbel's entire argument in favor of the broad inspection he requested consists of stating his status as a manager and citing case law whose logical underpinning does not match his circumstances.[164] Given the express requirement to "manage, operate and control" the entity by Approval, managers' disparate authority under the LLC Agreement, Capone JV's authority to act by written consent and Covered Persons' right to act in their

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[161] The LLC Agreement eliminates managers' fiduciary duties. LLC Agreement § 14.02(a). By statute, managers retain a duty of good faith and fair dealing under the LLC Agreement. 6 *Del. C.* § 1101(c). Gimbel did not allege a violation of that contractual duty in this case.

[162] LLC Agreement § 14.01(a).

[163] LLC Agreement § 14.02(b) (emphasis added).

[164] Again, the Court acknowledges that, in *Bruckel*, this Court repeatedly referred to the plaintiff's "status" as a manager when discussing his statutory inspection rights. 2023 WL 116483, at *2. In *Bruckel*, however, the Court was not presented with a mismatch between the plaintiff's status and his authority and duties.

own self-interest, the Court concludes that Gimbel has not pleaded a *prima facie* case supporting inspection.

C. GimCo Is Entitled to Inspect Records Under Section 12.02 of the LLC Agreement.

The Demand states that GimCo "seeks financial books and records pursuant to the LLC Act for the purpose of valuing its interest in the Company."[165] Notwithstanding that representation, Gimbel testified during his 30(b)(6) deposition on behalf of GimCo that GimCo *does not* have a valuation purpose.[166] Gimbel's disavowal of GimCo's valuation purpose leaves GimCo in the position of having stated no proper purpose in the Demand, which disqualifies GimCo from inspecting records pursuant to Section 18-305.[167]

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[165] POB 55–56; Demand at 3.

[166] Gimbel Dep. 45:15–46:1 ("Q. Now, you also indicated . . . that you wanted to value GimCo's interest in Capone; is that right? A. I think you said that. I don't know if I said that. Q. Okay. Well, let me ask it that way. I appreciate that. As you sit here today, are you seeking to value GimCo's interest in [Holdco]? A. No, I don't—that's not the driving force. It's always nice to know what your investment is worth, but that's not the purpose."); *see also* Dkt. 56 Schedule A ¶ 8 ("'Plaintiffs,' 'You,' or 'Your' mean and refer to GimCo, Inc. and Thomas Gimbel and each of their agents, legal representatives, advisors, and all representatives and other persons acting on behalf of or under the direction or control of any of the foregoing.").

[167] *See* 6 *Del. C.* § 18-305(a). *Cf. Sec. First Corp. v. Die Casting and Dev. Co.*, 687 A.2d 563, 570 (Del. 1997) ("U.S. Die made a written demand for copies of defendant's most recent stockholder list 'to communicate with the shareholders of Security with respect to Security's business, particularly the failed merger with Mid Am., Inc.' In his deposition and at trial, however, Slyman admitted that he had no

But Gimbel's disavowal does not determine GimCo's right to inspect records under the LLC Agreement.[168] GimCo's contractual inspection rights are separate from the default inspection rights provided in Section 18-305 of the LLC Act.[169] Section 12.02 of the LLC Agreement states that Qualified Members may have reasonable access to, among other things,

> the corporate, financial and similar records, reports and documents of the Company and the Company subsidiaries, including, without limitation, all books and records, minutes of proceedings, internal management documents, reports of operations, reports of adverse developments, copies of any management letters and communications with Members or the Board, and to permit each Qualified Member and its Representatives to examine such documents and make copies thereof[.][170]

Section 12.02 does not require GimCo to state a proper purpose for inspection.[171]

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idea what he would do with such a list. It is a sufficient defense for a corporation to show that a stockholder list was sought from 'idle curiosity.' We find that Security First has met its burden of proving that the plaintiff's demand to inspect the stockholder list was not for a proper purpose.").

[168] *See Madison Real Est. Immobilien-Anlagegesellschaft Beschrankt Haftende Kg v. Kanam USA XIX Ltd. P'ship*, 2008 WL 1913237, at *13 (Del. Ch. May 1, 2008) (citing *In re Paine Webber Ltd. P'ships*, 1996 WL 535403, at *7 (Del. Ch. Sep. 17, 1996)); *Bond Purchase, L.L.C.*, 746 A.2d at 855.

[169] *See Bond Purchase, L.L.C.*, 746 A.2d at 855.

[170] LLC Agreement § 12.02(b).

[171] *See generally* LLC Agreement § 12.02.

Defendant challenges GimCo's entitlement to inspect books and records despite the clear language of Section 12.02 and the absence of a proper purpose requirement. Defendant argues that under Delaware law, even when there is no proper purpose requirement, a defendant can defeat an inspection request with an "improper purpose defense[.]"[172] Defendant further argues that GimCo's purported interest in inspecting records is a pretext for pursuing Gimbel's alleged primary and improper, purpose: "to exert micro-managerial control over the Company and undermine the Company for removing [Gimbel] as the CEO of LaSalle Network."[173]

"Under Delaware law, unless a contract imposes a 'proper purpose' requirement on an inspection right, a court should not read in such a requirement."[174] As explained in *Madison Real Estate*, the Court may nevertheless deny an inspection request where:

> (i) neither the explicit contractual provision in a [LLC] agreement nor statutory language negate the notion that a [member] must have a proper purpose and (ii) the [manager] denying another [member] access to [LLC] business records can show that the [member] seeking access is doing so for a purpose

[172] DAB 43.

[173] DAB 41.

[174] *Madison Real Est.*, 2008 WL 1913237, at *13 (citing *Paine Webber Ltd. P'ships*, 1996 WL 535403, at *7).

> personal to that [member] and adverse to the interests of the [LLC] considered jointly.[175]

Defendant contends that this analysis is relevant here.

Defendant asserts, and the Court agrees, that Section 12.02 does not explicitly disclaim a proper purpose requirement, it merely omits such a requirement.[176] Defendant asks the Court to infer from the facts of this case that GimCo seeks inspection to help Gimbel achieve a personal purpose: "to micro-manage or undermine the Company for removing him as the CEO of LaSalle Network."[177]

In support of the "micro-managerial control" theory, Defendant points to "[t]he fact that the parties are still litigating this matter even after [it] provided all existing books and records requested in [the] Demand[.]"[178] To support the argument that Gimbel wants to "undermine the Company," Defendant argues that Gimbel has admitted to "improperly sharing confidential information in violation of a provision of the [LLC] Agreement[.]"[179]

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[175] *Id.* at *13 (quoting *Bond Purchase, L.L.C.*, 746 A.2d at 857).

[176] *See* DAB 43; *see also* LLC Agreement § 12.02

[177] *Cf.* DAB 41 (alleging pretext defense against Gimbel).

[178] DAB 41.

[179] DAB 41–42 (citing Gimbel Dep. 16:10–14).

Assuming, *arguendo*, that GimCo's purpose is to help Gimbel pursue a personal interest,[180] under *Madison Real Estate*, Defendant can defeat GimCo's inspection right only by showing that the purpose is adverse to Holdco's interests.[181] Defendant has failed to do so.

First, the facts in the record are more consistent with Gimbel's desire to remain informed about LaSalle, the company Gimbel founded and ran for two decades, than it is to micro-manage Holdco.[182] Gimbel did not express any significant disagreements with the other managers' (or Vogel's) decisions, but only with their reluctance to discuss issues with Gimbel.[183] Second, even a *desire* to micro-manage Holdco would not strike the Court as being adverse to Holdco's interests because it is simply impossible for Gimbel to exercise such control in Holdco. The entity is managed by Approval, which Gimbel lacks the ability to obtain or impede alone.[184] Finally, on this record, the Court is not persuaded that a desire to micro-manage Holdco is adverse to

[180] The Court has concluded that Gimbel seeks inspection on his own behalf to serve a personal interest. It does not conclude that GimCo therefore has no inspection right related to its interest as a member.

[181] *Madison Real Est.*, 2008 WL 1913237, at *13.

[182] *See* Gimbel Dep. 54:19–55:6, 56:8–14; 89:10–90:12; 155:21–23, 242:21–243:2.

[183] *See* JX48 at 1.

[184] *See* LLC Agreement §§ 4.08, 4.09, 8.07. The single exception, as noted, is making a material change to the business. LLC Agreement § 2.05. This does not appear to be at issue in this action.

Holdco, or its members and managers (considered jointly), because Gimbel's personal economic interest appears to be tied to the success of LaSalle and Holdco.[185]

Defendant also argues that GimCo's true purpose is to help Gimbel "undermine" Holdco in retaliation for terminating Gimbel as LaSalle's CEO. In support of that argument, Defendant notes that Gimbel has, in the past, shared Holdco's confidential information.[186] The Court does not draw the same inference from Gimbel's admitted disclosures. Gimbel did not disclose confidential information for the purpose of harming Holdco (or Capone).[187]

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[185] *See, e.g.*, Gimbel Dep. 222:20–25. *Cf. In re Paine Webber Ltd. P'ships*, 1996 WL 535403, at *8 ("The defendants claim that the limited partners could be harmed by the plaintiffs' aggressive sales tactics, but even if that assertion were to be credited, defendants have not shown that that conduct would adversely affect (in an economic sense) the defendant limited partnerships as a whole, as distinguished from the limited partners as individuals.").

[186] DOB 42.

[187] *See* Gimbel Dep. 77:6–13 ("Q. When you forwarded this e-mail to Mr. Ochstein, did you consider how his reading it might affect Fishbowl's relationship with Capone? A. Yes. Q. And what did you consider? A. He knew that Capone fired me already, and he asked me if he should continue to work with LaSalle and I told him he should."); *see also* Gimbel Dep. 128:11–18 ("Q. So you believe it's in the best interest of Capone to be sharing internal Capone information with the auditors; is that true? A. I – I don't know. Q. You didn't think about that before you sent the information that you did to Mr. Donato? A. I didn't think it was detrimental to Capone, no.").

Also, as previously noted, the Court is not persuaded that Gimbel wants to undermine Holdco because doing so would risk harming his personal economic interest.[188]

For the foregoing reasons, GimCo is not required to state a proper purpose for inspection, and Defendant has not overcome GimCo's contractual entitlement to inspect Holdco's books and records under Section 12.02 of the LLC Agreement.

That said, the Court will not allow Gimbel's late-stage disavowal of GimCo's valuation purpose to effectively expand the scope of the records GimCo requested. Holdco defended this action on the basis that GimCo seeks to inspect records relating to a valuation purpose. As a matter of fairness, the Court will limit any further inspection records that would advance the purpose of valuing GimCo's interest in Holdco.[189]

D. The Scope of GimCo's Inspection Right

The LLC Agreement grants members a fairly broad inspection right. Section 12.02 states:

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[188] *See, e.g.*, Gimbel Dep. 222:20–223:7.

[189] As a member of Holdco, GimCo has "an omnipresent contractual inspection right that is not conditioned on the pendency of a books and records action." *Bruckel*, 2023 WL 116483, at *4. But the language of GimCo's demand will always be relevant to the Court's analysis if it is asked to order inspection.

> Upon reasonable notice from a Qualified Member, the Company shall, and shall cause its Managers, Officers and employees to, afford each Qualified Member and its Representatives reasonable access during normal business hours to . . . the corporate, financial and similar records, reports and documents of the Company and the Company Subsidiaries, including, without limitation, all books and records, minutes of proceedings, internal management documents, reports of operations, reports of adverse developments, copies of any management letters and communications with Members or the Board, and to permit each Qualified Member and its Representatives to examine such documents and make copies thereof[.][190]

The Court takes note of the phrase "all books and records." This Court has found that this broad language makes it "difficult to infer an implicit limitation on the availability of corporate documents."[191] The Court also notes that the drafters employed the broad phrase "including, without limitation."

The following categories of materials remained in dispute at the time of the trial:

1. Board Documents and Board Communications regarding "[f]ormal or informal opinions on current and projected value of the Company";

2. Board Documents and Board Communications regarding "[c]ommunications with advisors/consultants (e.g., Deloitte) regarding financial situation, business, plan, or strategy";

[190] LLC Agreement § 12.02.

[191] *Arbor Place, L.P.*, 2002 WL 205681, at *3.

3. "All other Board Documents and Board Communications regarding Company and Subsidiaries' finances";

4. "All Board Documents and Board Communications regarding adverse developments (e.g., contract cancellations, resignations, etc.)";

5. "Board Documents and Board Communications relating to decision not to issue tax distributions" for the first quarter of 2025;

6. "Board Documents and Board Communications relating to CEO search/selection for LaSalle";

7. "Board Documents and Board Communications relating to termination of CFO Lawrence Casas";

8. "Board Documents and Board Communications relating to resignation of Controller Ryan Chabus";

9. "Board Documents and Board Communications relating to termination of approximately 20% of workforce"; and

10. "Documents related to any actual or potential business acquisitions, mergers, or business combinations involving the Company."[192]

Before addressing the specific requests, the Court makes preliminary findings concerning (1) the defined terms GimCo used in the Demand, (2) access to communications between and among Managers and (3) access to communications available only on Infinedi servers.

[192] The Court incorporates the list on pages 32 and 33 of Plaintiffs' Pretrial Brief, which cross-references specific items from the Demand. *See* POB 32–33; Demand at 5–8. The Court made slight revisions to the list in Plaintiffs' brief to hew more closely to the language in the Demand.

1. GimCo's Defined Terms Restrict the Scope of its Requests

GimCo used two defined terms in the Demand: "Board Documents" and "Board Communications." The parties dispute whether these definitions improperly seek to expand the scope of GimCo's contractual inspection right.[193] The Demand defines "Board Documents" as

> any and all documents considered by, presented to, or created by the other Managers of the Company in the course of carry[ing] out their duties as Managers, whether formal or informal and regardless of the format in which they were created or stored.[194]

"Board Communications" is defined to mean

> any and all communications between and among any Manager of the Company, on one hand, and any other Manager, Officer, or senior employee of the Company, on the other hand, created or sent in the course of a Manager's duties, regardless of the medium, including emails and text messages.[195]

GimCo may not expand its contractual rights through an artful use of defined terms,[196] but restricting the scope of its request, or increasing its

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[193] *See* DAB 8–9.

[194] Demand at 5 n.2.

[195] Demand at 5 n.2.

[196] For example, GimCo may not create for itself a right to inspect emails and texts unless the Court finds that Section 12.02 clearly grants a right to inspect those materials. For reasons explained later in this report, the Court finds that Section 12.02 does not provide automatic access to emails and text messages.

precision, is permitted. Indeed, requesting parties often do this in records inspection actions. The Court finds that GimCo's definitions primarily limit the scope of GimCo requests. Where they would expand GimCo's reach beyond that provided in Section 12.02, the Court disregards the attempted expansion.

When applied to a requested category of records, the definitions of "Board Documents" and "Board Communications" limit the request in two ways. First, they require creation or use "in the course of" performing the manager's duties for Holdco. Second, they target records "of the Company" and the communications of personnel "of the Company," thereby excluding records held at the Holdco subsidiary and reaching only intra-Holdco communications.

2. GimCo Is Not Presumptively Precluded From Inspecting Communications Between and Among Managers

Section 12.02 expressly permits access to "management letters and communications with Members or the Board."[197] Read in isolation, this language might suggest that a member may not inspect letters or communications between or among Managers of Holdco. But because Section 12.02 also uses the words "including, without limitation," the Court

[197] LLC Agreement § 12.02.

concludes that GimCo is not limited to seeking communications "with" the Holdco Board but may also seek communications "between or among" Board members themselves.[198]

For the same reason, the Court finds that GimCo may be able to establish a right to inspect emails. However, GimCo would first have to prove that emails constitute "books and records" of Holdco.[199] Here, the words "including, without limitation" do not have the same effect. The drafters of Section 12.02 focused on "formal" records when they permitted the inspection of "corporate, financial and similar records, reports and documents" and in the illustrative examples of "books and records," "minutes," "management documents," and "reports" (of operations and adverse developments).[200] The Court construes the remaining illustrative example, "letters and

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[198] The Court notes, however, that it has historically taken care to explain that the communications of persons who operate on behalf of a corporation or entity do not necessarily constitute "books and records" of the corporation or entity, at least in the absence of unmistakably clear language identifying them as such. *See Chammas v. Navlink, Inc.*, 2016 WL 767714, at *11 (Del. Ch. Feb. 1, 2016) (finding that "[m]ere conversations, especially in the absence of alleged mismanagement or wrongdoing, between management and [a non-party] do not rise to the level of corporate records" subject to inspection).

[199] *See, e.g.*, *Arbor Place, L.P.*, 2002 WL 205681, at *5 ("The LLC [a]greements permit the inspection of the books and records of the LLCs. Arbor is now seeking the books and records of the Funds. This clearly falls outside the provisions of the LLC [a]greements, which allow inspection of 'all books and records *of the Company*.' Arbor has no contractual right to inspect the records of the Funds.").

[200] LLC Agreement § 12.02.

communications," against this backdrop. The Court does not infer that the drafters intended "including, without limitation" to reach electronic communications as a matter of course, because Delaware law considers them to be "informal" records. As discussed in the next section, however, if GimCo were to show that informal communications meet the definition of "books and records" "of Holdco," they would be expressly covered by Section 12.02.

3. When GimCo May Be Permitted to Inspect Emails on Infinedi Servers

GimCo argues that it is entitled to inspect books and records in the possession, custody or control of Infinedi. Defendant argues that Section 12.02 expressly extends only to the records of Holdco or its subsidiaries.[201] Defendant is generally correct. GimCo may also be correct in a narrow set of circumstances.

All of Hegenbart's and Harned's communications are conducted using an Infinedi email address.[202] Such communications could be records "of Holdco" if they constitute "performing managerial duties for Holdco," notwithstanding that they may not "reside" at Holdco. It is perhaps unlikely that "performing managerial duties for Holdco" will not involve personnel at

[201] Plaintiffs may not access the subsidiary's records in this case for the reasons previously stated.

[202] Vogel Dep. 17:14–18:4, 18:16–22.

Holdco or LaSalle, but the Court cannot say at this stage that it is impossible for "intra-Infinedi" emails to reflect a manager's "perform[ance of] managerial duties for Holdco."

Even so, if a search of intra-Infinedi emails were implicated, the Court would also consider, at least, the burden and cost of ordering a search, and whether the information available would be cumulative or duplicative in light of records already produced. The Court has agreed that Holdco generally has no right to access Infinedi servers, but it assumes that Hegenbart and Harned, as the people with primary authority over Holdco and Infinedi, are empowered to permit access for Holdco's counsel to defend Holdco or would comply with a court order should circumstances warrant.[203]

4. GimCo May Be Entitled To Inspect A Limited Number Of Additional Records

a. Request 1

Request 1 seeks Board Documents or Board Communications regarding "[f]ormal or informal opinions concerning [the] current and

[203] *Cf. Woods Tr. of Avery L. Woods v. Sahara Enter., Inc.*, 238 A.3d 879, 904 (Del. Ch. July 22, 2020) (finding that "[i]f the entity's human representatives can access books and records in the ordinary course of business whenever they wish to do so for their own purposes, then they equally can be compelled to do so by court order.").

projected value of [Holdco]."[204] The Court finds that at least formal opinions of current value found in corporate and financial records, reports or documents, and in "Board Communications," both fall within the scope of Section 12.02[205] *and* relate to GimCo's valuation purpose.

Holdco represented that the only possible unproduced records in this category would be "[c]ommunications by Infinedi personnel in their capacity as representatives of the Sponsor Member."[206] If they exist and they reflect the performance of managerial duties for Holdco, they are "books and records" "of Holdco." Defendant did not concede that communications exist; it argued that it cannot know because it has no access. The Court is not necessarily limited by such arguments, but it is not ordering additional inspection at this time because it remains concerned about the burden and expense of sifting through communications for records that may or may not exist and that may be no more than cumulative in light of the records already provided to GimCo. The Court has no record on these issues.

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[204] Demand at 5–6; *see also* PTO ¶ 31(a).

[205] *See* LLC Agreement § 12.02 (providing a right to inspect, among other things, financial "records, reports and documents of the Company and the Company Subsidiaries, including, without limitation, all books and records"); *Arbor Place, L.P.*, 2002 WL 205681, at *3 ("It is difficult to infer an implicit limitation on the availability of corporate documents in the face of this broad language.").

[206] DAB 32 (quoting JX83 at 13).

b. Request 2

Request 2 seeks Board Documents and Board Communications regarding "[c]ommunications with advisors/consultants (e.g., Deloitte) regarding [the] financial situation, business, plan, or strategy [of or for Holdco]."[207] Again, Holdco's position is that the only possible unproduced records in this category would be "[c]ommunications by Infinedi personnel in their capacity as representatives of the Sponsor Member."[208] In his deposition, Vogel conceded that Holdco communicates with Deloitte about tax returns.[209] Holdco argues these communications need not be produced because they are not Board Documents.[210]

Request 2 also seeks Board Communications.[211] Nevertheless, communications between a manager and a third-party advisor or consultant fall outside the definition's restriction to intra-Holdco communications.[212] To

[207] Demand at 5–6; PTO ¶ 31(b).

[208] DAB 32 (quoting JX83 at 13).

[209] DAB 24 (citing Vogel Dep. 201:10–11).

[210] DAB 24.

[211] *See* Demand at 5.

[212] *See* Demand at 5 n.2.

the extent that there could be communications on Infinedi servers, the Court declines to order inspection for the reasons stated in connection with Request 1. The Court orders no additional inspection in connection with Request 2.

c. Request 3

Request 3 seeks "[a]ll other Board Documents and Board Communications regarding [Holdco] and [Holdco] Subsidiaries' [f]inances."[213] Financial records of Holdco and its subsidiary are expressly covered by Section 12.02.[214] However, by restricting the request to Board Documents and Board Communications,[215] the Demand excludes records held at the subsidiary level. Also, not "all" records in this category would support the purpose of valuing GimCo's interest in Holdco.

GimCo has received "final weekly financial dashboard[s] and monthly financial reports."[216] Holdco represented that the only possible unproduced records in this category would be "[c]ommunications by Infinedi personnel in their capacity as representatives of the Sponsor Member."[217] The Court

[213] Demand at 6; *see also* PTO ¶ 31(c). Plaintiffs elected to omit limitations found in the Demand from the majority of the requests listed in the Pretrial Order.

[214] LLC Agreement § 12.02.

[215] *See* Demand at 5–6.

[216] POB 40.

[217] DAB 32 (quoting JX83 at 13).

declines to order the inspection of any such records that may exist for the reasons previously stated. The Court orders no additional inspection in connection with Request

d. Request 4

Request 4 seeks "[a]ll Board Documents and Board Communications regarding adverse developments[,]" including, but not limited to, contract cancellations and resignations.[218] "[R]eports of adverse developments" are expressly covered under Section 12.02.[219] For reasons already described, this does not necessarily mean that only "reports" may be inspected. But the scope of Request 4 is limited by GimCo's definitions of "Board Documents" and "Board Communications," and for the reasons previously stated, the Court would restrict the scope of Request 4 to records reflecting adverse developments, if any, that impacted the value of GimCo's interest in Holdco.

In any event, Holdco represented that the only possible unproduced records in this category would be "[c]ommunications by Infinedi personnel in their capacity as representatives of the Sponsor Member."[220] The Court

[218] Demand at 7; *see also* PTO ¶ 31(g).

[219] LLC Agreement § 12.02.

[220] DAB 32 (quoting JX83 at 13).

declines to order the inspection of any such communications that may exist for the reasons previously stated. The Court orders no additional inspection in connection with Request 4.

e. Request 5

Request 5 asks for "[a]ll Board Documents and Board Communications . . . relating to the decision not to issue tax distributions for the first quarter of 2025[.]"[221] Holdco objects to this request on the basis that it already "confirmed that no tax distribution was made to any Members of the Company in 2025 . . . and the other answers to this topic . . . were addressed in the email to Tom Gimbel dated May 1, 2025."[222] Holdco has confirmed that the decision was made by the Sponsor Member. Moreover, Holdco has produced its "monthly, unaudited consolidated balance sheet, statement of income, and cash flow for each month, including July 2025," and has repeatedly confirmed that no additional materials exist.[223]

[221] Demand at 7; *see also* PTO ¶ 31(h).

[222] DAB 18; *see also* JX84 at 2.

[223] *See* DOB at 22.

The remaining materials that GimCo seeks sweep beyond what is needed to value its interest. GimCo appears to be looking for the "why" of the Sponsor Member's decision, and that is not related to GimCo's purpose. The Court declines to order further inspection in connection with Request 5.

f. Request 6

Request 6 asks for "[a]ll Board Documents and Board Communications . . . relating to the search for and/or selection" of Gimbel's replacement as CEO of LaSalle.[224] Vogel confirmed that he spoke with the Sponsor Managers by email during his hiring process,[225] and that he "received the [hiring] paperwork and employment agreement by email" from the Sponsor Managers.[226]

Holdco represents that it has produced all responsive materials through its production of Board meeting presentations, and it represents that "[t]here are no other Board documents or communications regarding the

[224] Demand at 7; *see also* PTO ¶ 31(i).

[225] Vogel Dep. 112:14–113:3.

[226] Vogel Dep. 113:25–114:13. Vogel testified that he does not know what documents were submitted on his behalf because he worked through an executive recruiter. Vogel Dep. 111:8–19. Vogel also noted that Holdco may have collected documents supporting the hiring process for potential candidates for the CEO position. Vogel Dep. 111:20–24. To the extent that such records exist and fall within the definition of Board Documents, they are responsive. To the extent that they may reside solely on Infinedi servers, they do not lose their status as records "of Holdco" for that reason alone.

selection of a CEO to replace [] Gimbel as CEO of LaSalle[.]"[227] GimCo says Holdco represented that Infinedi possesses materials related to the search and hiring for Gimbel's replacement.[228] The Court disagrees. Holdco argued that any records that may exist *would* be the books and records of Infinedi, but it has not represented that those books and records exist.[229]

The record does not clearly establish whether Hegenbart and Harned conducted the executive search in their capacity as managers performing managerial duties for Holdco. If they did, in whole or in part, their informal communications would be "books and records" "of Holdco." Nevertheless, the Court declines to order the inspection of any such communications that may exist for the reasons previously stated. In addition, the records in this category would not serve the valuation purpose stated in GimCo's Demand. The Court orders no additional inspection in connection with Request 6.

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[227] DAB 22.

[228] PAB 41 (citing JX83 at 13–14).

[229] *See* JX83 at 13 (stating, first, that Plaintiffs "have absolutely no right to inspect the books and records of any other entity or non-party, including Infinedi" and then that "the following documents are the books and records of Infinedi and, thus, not the records of the Company or the Company's subsidiaries").

g. Request 7

Request 7 asks for "[a]ll Board Documents and Board Communications . . . relating to the termination of" CFO Lawrence Casas.[230] Holdco represented that the only possible unproduced records in this category would be "[c]ommunications by Infinedi personnel in their capacity as representatives of the Sponsor Member."[231] The Court declines to order the inspection of any such communications that may exist for the reasons previously stated.

GimCo concedes that it has received "the severance agreement and release" of Casas, but it believes other records exist at the Holdco or subsidiary level because Vogel "communicated with the Sponsor Managers about the decision."[232] Vogel testified that it was his decision to terminate Casas but that he "let [Hegenbart] know that" he "was going to" terminate

[230] Demand at 7; *see also* PTO ¶ 31(j).

[231] DAB 32 (quoting JX83 at 13).

[232] POB 41.

Casas.[233] Vogel also testified that he informed Harned of the decision.[234] Vogel spoke with the two Sponsor Managers on this subject to seek advice about terminating Casas.[235]

Hiring and firing executives at LaSalle is a LaSalle management function, not a Holdco management function. Records relating to Vogel's hiring and firing decisions as the CEO of LaSalle are not "Board Documents" or "Board Communications" because they do not concern Managers' managerial duties for Holdco.[236] Request 7 also seeks records unrelated to the valuation purpose stated in GimCo's Demand. The Court orders no inspection in connection with Request 7.

h. Request 8

Request 8 asks for "[a]ll Board Documents and Board Communications . . . relating to the resignation of" Controller Ryan Chabus.[237] GimCo again argues that Holdco confirmed the existence of responsive materials under

[233] Vogel Dep. 119:20–121:3.

[234] Vogel Dep. 121:4–10.

[235] Vogel Dep. 120:22–121:10.

[236] Demand at 5 n.2.

[237] Demand at 8; *see also* PTO ¶ 31(k).

Infinedi's control.[238] Again, the Court disagrees, for the same reasons stated in connection with Request 6, and the Court declines to order any inspection for the reasons stated there.

Plaintiffs assert that "Vogel specifically confirmed that [] Chabus sent a resignation email . . . which has not been shared with [] Gimbel."[239] He did.[240] Vogel also testified that he "may have sent [the resignation email] to [the Sponsor Managers]," but that he could not recall with certainty.[241]

Like the records sought in Request 7, however, the resignation email is not a "Board Document" or a "Board Communication." Chabus sent his email to Vogel, the CEO of LaSalle. If Vogel then sent the email to the Sponsor Managers, it was not an intra-Holdco communication. Also, the records requested in this category are not related to the valuation purpose stated in GimCo's Demand. The Court will order no inspection in connection with Request 8.

i. Request 9

Request 9 asks for "[a]ll Board Documents and Board Communications . . . relating to the decision to terminate approximately 20% of [LaSalle's]

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[238] POB 41–42.

[239] POB 42.

[240] Vogel Dep. 132:8–11.

[241] Vogel Dep. 132:12–24.

workforce."[242] The terminations occurred in 2025.[243] Vogel testified that the decisions to terminate were made by LaSalle's executive team and that Vogel did not discuss his decisions with Hegenbart and Harned until after he made the decisions.[244] As he did in connection with the termination of Casas, Vogel sought their perspective as advisors.[245]

The records and communications Vogel describes do not meet the parameters of GimCo's definition of "Board Documents" or "Board Communications." First, they are not intra-Holdco records. Second, they relate to the management of LaSalle, not Holdco.

Holdco represented that the only possible unproduced records in this category would be "[c]ommunications by Infinedi personnel in their capacity as representatives of the Sponsor Member."[246] The Court declines to order the inspection of any such records that may exist for the reasons previously stated. The Court orders no additional inspection of records for Request 9.

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[242] Demand at 8; *see also* PTO ¶ 31(l).

[243] Vogel Dep. 123:21–124:4.

[244] Vogel Dep. 124:15–125:8.

[245] Vogel Dep. 124:23–25

[246] DAB 32 (quoting JX83 at 14).

j. Request 10

Request 10 seeks "[d]ocuments related to any actual or potential business acquisitions, mergers, or business combinations involving" Holdco.[247] Notably, this category is not restricted to "Board Documents" and "Board Communications." GimCo is permitted to inspect Holdco corporate and financial records "including, without limitation, all books and records." Records relating to actual or potential transactions of the sort listed in Request 10 are covered by Section 12.02.

Vogel has confirmed that records exist in this category but suggests that they are not "Board-level information" unless a potential transaction materializes.[248] The Demand does not limit this request to board-level records. Likewise, it does not limit this request to intra-Holdco records. But the Court finds that the impact of a potential transaction on the value of GimCo's interest, if any, would likely be ephemeral. Thus, the Court would order inspection in this category only in connection with a consummated transaction. That would not extend to records on Infinedi servers for the

[247] Demand at 8; *see also* PTO ¶ 31(m).

[248] *See* Vogel Dep. 192:14–16; *see also* DAB 23 (arguing that "[t]here are no Board documents regarding actual or potential acquisitions or mergers"). Defendant contends that the DeWinter acquisition materialized after Plaintiffs made their Demand. DSB 3.

reasons already stated. To the extent that a business acquisition, merger or business combination has been consummated within the relevant period, GimCo is entitled to inspect records sufficient to understand the transaction's impact on the value of GimCo's interest. If there are any additional responsive records in this category, they must be provided to GimCo.

Holdco argues that transactions that have arisen since the date of the Demand are outside the scope of this inspection action under this Court's decision in *Pettry v. Gilead Sciences, Inc.*[249] The Court disagrees. *Pettry* involved a request for records that the plaintiff had not requested in the original demand.[250] In that context, this Court stated that "a stockholder's inspection rights are limited by the scope of the demand letter, and a Section 220 plaintiff will be foreclosed from recasting the scope of its demand at the eleventh hour."[251]

In this case, records relating to transactions arising after the date of the Demand are not a "new category" of records and seeking the records does not amount to "recasting the scope of [GimCo's] demand." GimCo could have sent a repeat demand at a later date, but the Court does not believe that is

[249] 2020 WL 6870461 (Del. Ch. Nov. 24, 2020); *see* DSB 3, 5.

[250] 2020 WL 6870461 at *27–28.

[251] *Id.* at *27.

necessary. The Court states no opinion regarding GimCo's right to inspect records relating to actual or potential transactions that may arise after the date of this report. Holdco must assess whether there are records related to consummated transactions arising after the date of the Demand that have not been provided to GimCo. If so, they should be provided.

E. The Court Declines to Shift Fees

Plaintiffs and Defendant requested an award of attorneys' fees. I decline to award fees to either side.

Under Section 15.14 of the LLC Agreement:

> In the event that any party hereto institutes any legal suit, action or proceeding, including arbitration, against another party in respect of a matter arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses and court costs.[252]

"Delaware generally follows the American Rule under which each party is obligated to pay its own attorneys' fees regardless of the outcome; however, where the parties have determined the allocation of fees by private ordering,

[252] LLC Agreement § 15.14.

departure from this general rule and deference to the agreement is warranted."[253] "Absent any qualifying language that fees are to be awarded claim-by-claim or on some other partial basis, a contractual provision entitling the prevailing party to fees will usually be applied in an all-or-nothing manner."[254]

"Under Delaware law, to be declared the prevailing party, a litigant must achieve predominance in the litigation. To achieve predominance, a litigant should prevail on the case's chief issue."[255] "There . . . can be more than one chief issue in a case."[256] Where the parties split on chief issues, neither side "can be said to have 'prevailed' so as to trigger the contractual entitlement to fee-shifting[.]"[257]

This is a case with two chief issues—whether Gimbel and GimCo, as a Manager and Member, respectively, are entitled to inspect Holdco records. Gimbel was not successful in proving an entitlement to inspection as the

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[253] *W. Willow-Bay Ct., LLC v. Robino-Bay Ct. Plaza, LLC*, 2007 WL 458779 , at *8 (Del. Ch. Feb. 23, 2009) (citations omitted).

[254] *Id.*

[255] *2009 Caiola Family Tr. v. Dunes Point W. Assocs., LLC*, 2015 WL 6007596, at *33 (Del. Ch. Oct. 14, 2015) (internal quotation marks omitted).

[256] *Duncan v. STTCPL, LLC*, 2020 WL 829374, at *15 (Del. Super. Feb. 19, 2020); *accord Mrs. Fields Brand, Inc. v. Interbake Foods LLC*, 2018 WL 300454, at *3 (Del. Ch. Jan. 5, 2018).

[257] *Mrs. Fields Brand, Inc.*, 2018 WL 300454, at *3.

GimCo Manager. GimCo proved its contractual entitlement, as a Member, to inspect six of ten requested categories of books and records. Accordingly, Plaintiffs and Defendants each achieved predominance on one issue. Given this split-victory, and the fact that this Court does not award fees on a claim-by-claim basis,[258] neither side can be said to have prevailed.[259] Accordingly, I decline both sides' request for fees.

IV. CONCLUSION

The Court concludes that Gimbel is not entitled to inspect additional records because he has not stated a proper purpose. GimCo may be entitled to inspect additional records as provided in this report. The parties are required to meet and confer regarding whether additional records may exist and to submit, within ten business days, a proposed implementing order reflecting the rulings in this report. If the parties need more time, they may file a status report within ten business days of the date of this report in lieu of an implementing order. The Court declines to award fees and expenses to either side.

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[258] *See W. Willow-Bay Ct., LLC*, 2007 WL 458779 at *8.

[259] *See Mrs. Fields Brand, Inc.*, 2018 WL 300454, at *3 (explaining that where "the parties split on two equally core issues, neither can be said to have 'prevailed' so as to trigger the contractual entitlement to fee-shifting" in the applicable governing instrument); *Duncan*, 2020 WL 829374, at *16 (finding same).

This is not a Final Report. Exceptions are stayed pending the release of a Final Report.