



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JANE H. GOLDMAN,

Defendant Below–Appellant,

v.

STEVEN GURNEY-GOLDMAN, as
Executor for the Estate of Allan H.
Goldman, and
AMY GOLDMAN FOWLER,

Plaintiffs Below–Appellees,

and

SG WINDSOR, LLC, a Delaware
Limited Liability Company,

Nominal Party Below–Appellee.

No. 166, 2025

Case Below:
Court of Chancery of the
State of Delaware
C.A. No. 2023-1124-JTL

APPELLANT’S CORRECTED OPENING BRIEF

OF COUNSEL:

Jason Cyrulnik
Paul Fattaruso
CYRULNIK FATTARUSO LLP
55 Broadway, Third Floor
New York, NY 10006
(646) 844-2466

Rudolf Koch (#4947)
Daniel E. Kaprow (#6295)
RICHARDS, LAYTON & FINGER, P.A.
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700

Counsel for Appellant, Jane H. Goldman

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Exhibit A: Post Trial Opinion dated July 12, 2024 (“OP”)

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NATURE OF PROCEEDINGS

Plaintiff Steven Gurney-Goldman, as executor of the estate of his late father, Allan Goldman, brought this action seeking a declaration that Allan's estate was a *member* of SG Windsor, LLC, an entity of which Allan had been a member during his lifetime. The Court of Chancery correctly held that Allan's estate was *not* a member of SG Windsor under Delaware law, but rather is an *assignee*. OP20-30. No one challenges that sound ruling, which fundamentally rejected Steven's core theory of the case.

As a result, Steven's circumscribed executor rights with respect to SG Windsor are governed by Section 18-705 of the Delaware Limited Liability Company Act (the "LLC Act"). As noted by the Court of Chancery (OP31), this case presents a question of first impression regarding the scope of those statutory rights.

By its express terms, Section 18-705 covers two distinct scenarios:

- (i) an "Executor Scenario," in which "a member who is an individual dies," and
- (ii) a "Disability Scenario," in which "a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property."

Section 18-705 addresses these two scenarios in a single sentence, using distributive phrasing (in which correlated terms in a sentence are appropriately paired up) to separately identify the distinct scope of the rights accorded under

each of the two scenarios. As an example to illustrate this distributive-phrasing principle:

Suppose an invitation states, “The vegetarian and nonvegetarian meal options are tofu and chicken.” A reader would intuitively understand that tofu was the vegetarian option and chicken was the nonvegetarian option—not that either tofu or chicken was a vegetarian option. This is the distributive-phrasing canon at work.¹

Applying the distributive-phrasing canon of construction to the text of Section 18-705, the statute articulates two separate and distinct *purposes* for which the member’s rights may be exercised: one purpose under the Executor Scenario, and one purpose under the Disability Scenario. In the Executor Scenario, the executor may exercise the deceased former member’s rights “for the purpose of settling the member’s estate.” In the Disability Scenario, the member’s appointed guardian may exercise the incompetent person’s member rights for the purpose of “administering the member’s property.” The relevant sentence reads, in full, as follows, with the language specific to the Executor Scenario in italics and the language specific to the Disability Scenario in underlined text:

***If a member who is an individual dies* or a court of competent jurisdiction adjudges the member to be incompetent to manage the member’s person or**

¹ *Giroux v. Comm. Representing Petitioners with Respect to Initiative Petition Proposing Amend. to Ohio Const. Entitled Right to Reprod. Freedom with Protections for Health & Safety*, 236 N.E.3d 170, 174 (Ohio 2023).

property, the member's personal representative may exercise all of the member's rights for the purpose of *settling the member's estate* or administering the member's property, including any power under a limited liability company agreement of an assignee to become a member.²

In addition to its unmistakably clear distributive-phrasing framework, it is clear that the purpose of “settling the member’s *estate*” relates to the Executor Scenario because it discusses the “estate,” whereas the purpose of “administering the *member’s property*” relates to the Disability Scenario, because it instead discusses the incompetent member’s “property,” tracking the earlier reference to the incompetent person’s inability to manage his or her “person or property.” In the Executor Scenario, the former member has died and has an “estate,” no “property.” And conversely in the Disability Scenario, the member is still alive, continues to own “property,” and does not have an estate to settle—there can be no serious suggestion that the purpose of “settling the member’s estate” is a purpose that relates to the Disability Scenario.

Despite the clear statutory language, the Court of Chancery erroneously declined to apply the distributive-phrasing canon to Section 18-705, and incorrectly held that the statute empowers executors to exercise decedents’ member rights not only for the purpose of “settling the member’s estate,” but also for the

² 6 *Del. C.* § 18-705 (italics and underlines added).

purpose of “administering the member’s property.” *See* OP36-38. That is simply not what the statute says. Indeed, in the Executor Scenario, the deceased member no longer owns property; only the estate owns property. The Court of Chancery’s construction of Section 18-705 effectively and improperly replaced the phrase “administering the *member’s* property” with the phrase “administering the *estate’s* property.” It was reversible error for the Court of Chancery to depart from Section 18-705’s statutory text.

In its decision, the Court of Chancery acknowledged, “Typically, the process of giving effect to the intent of the legislature begins and ends with the statutory text. The statutory words should be given the meaning intended by the lawmakers.” OP31-32 (quoting 82 C.J.S. *Statutes* § 393). And as to Section 18-705, the Court of Chancery specifically stated: “Its plain meaning controls.” OP48. Despite this, the Court of Chancery expressed the view that Section 18-705 “could benefit from thoughtful legislative attention” and described the statutory text as what the statute “currently” states. OP33. From there, the court declined to apply the clear intent demonstrated by the statutory text (including under the distributive-phrasing canon) and instead imposed its own view of what it regarded as the more “reasonable” rule. OP38.

That aspect of the Court of Chancery’s opinion should not stand uncorrected, and this Court should therefore modify the Court of Chancery’s opinion to make

clear that under Section 18-705's Executor Scenario, an executor may exercise the decedent's member rights solely for the purpose of "settling the member's estate."

SUMMARY OF ARGUMENT

1. The Court of Chancery incorrectly held that Steven Gurney-Goldman, as executor of the estate of Allan H. Goldman, was authorized under 6 *Del. C.* § 18-705 to exercise the powers of a member of SG Windsor not only for purposes of settling his father's estate, but also for purposes of "administering" his deceased father's former property, despite the fact that, as the Court of Chancery correctly found, the estate is not a member of SG Windsor but is instead merely an assignee of the interest the deceased member held when he was alive, nor is Steven the guardian of a living member whom a court of competent jurisdiction had adjudged to be incompetent to manage his or her person or property (which is the scenario in Section 18-705 under which a personal representative may exercise member rights for the purpose of "administering the member's property").

STATEMENT OF FACTS

A. Sol Goldman Creates a Real Estate Empire Held by LLCs and Managed by His Children After His Death

Sol Goldman began investing in New York real estate in the 1930s. OP2.

When he passed away in 1987, he left behind a billion-dollar estate. OP2. Prior to her father's death, Sol's daughter, defendant Jane Goldman, worked alongside him to manage the family business. After Sol's death, Jane, her brother Allan Goldman, and longtime employee Louisa Little were named co-executors and continued in ongoing management roles. OP3, OP7.

Solil Management LLC (the "Property Manager") is a New York LLC that provides property-management services to the LLCs that own properties within the Goldman family real estate business and is the only one of the hundreds of Goldman-family-property-holding LLCs with any employees. OP4-5. The Property Manager has two members: (i) SG Empire, a New York LLC; and (ii) the entity at issue in this case: SG Windsor, LLC, a Delaware LLC. OP5. Until 2022, Sol Goldman's four children (Jane, Allan, Diane Goldman Kemper, Amy Goldman Fowler) each held a 25% interest in SG Windsor. OP5.

B. Allan Goldman Dies, and His Son Steven Seeks to Become a Manager in the Goldman Family Business

In 2022, Allan Goldman became the first of Sol Goldman's children to die, and his will named his then-31-year-old son, Steven Gurney-Goldman, as executor

of his estate. OP8. As of the time of the Court of Chancery's decision, Allan Goldman's estate remained open. OP9.

Steven harbored hopes of managing the Goldman family real estate business jointly with Jane upon his father's death. Jane felt that Steven was unprepared to take on a major decision-making role at that point. OP9.

C. Relevant Procedural History

In 2023, days after bringing suit in New York with a 134-page complaint challenging, among other things, Jane's management of SG Empire and the Property Manager, Steven along with his aunt, Amy Goldman Fowler, filed this suit in Delaware. Steven sought, among other things, a declaration that Allan's estate is a member of SG Windsor. OP11; A46-48 ¶¶ 34, 39.

Following a one-day trial, the Court of Chancery held that Allan Goldman's estate was only an *assignee* of an interest in SG Windsor and *not* a member of SG Windsor. OP25. The Court of Chancery, however, interpreted Section 18-705 to mean that Steven could nonetheless exercise member rights, not only for the purpose of settling Allan's estate (i.e., the portion of Section 18-705 that relates to the Executor Scenario), but also for the purpose of administering Allan's property (i.e., the portion of Section 18-705 that relates to the Disability Scenario, which is inapplicable here).

ARGUMENT

I. Section 18-705 Authorizes an Executor of a Non-Member Estate to Exercise the Decedent's Member Rights Solely for the Circumscribed Purpose of Settling the Member's Estate

A. Question Presented

Whether the Court of Chancery erroneously construed 6 *Del. C.* § 18-705 to authorize the executor of a decedent's estate to exercise the decedent's member rights not only for the purpose of settling the member's estate, but also for the purpose of administering the member's property. *See* A402-11, A906-10; OP31-62.³

B. Scope of Review

"The Court of Chancery's legal conclusions are reviewed *de novo*." *RBC Cap. Mkts., LLC v. Jervis*, 129 A.3d 816, 849 (Del. 2015). The statutory construction and interpretation of Section 18-705 is a question of law, and the question presented must be reviewed *de novo*. *CML V, LLC v. Bax*, 28 A.3d 1037, 1040 (Del. 2011) (construing LLC Act and explaining: "We review issues of statutory construction and interpretation *de novo*.").

C. Merits of Argument

Given the Court of Chancery's unchallenged ruling that Allan's estate is not a member of SG Windsor (OP20-30), it is undisputed that Plaintiff Steven Gurney-

³ This appeal is limited to the question of whether the Court of Chancery misconstrued the statutory text and does not seek to raise unripe questions regarding an executor's right to exercise any particular hypothetical member right.

Goldman's rights as executor of his father's estate with respect to SG Windsor are governed by 6 *Del. C.* § 18-705. Section 18-705 squarely establishes that Steven as executor (but non-member of the LLC) may exercise the deceased member's rights *solely* for the purpose of "settling the member's estate." The plain text of the statute makes this clear in two ways:

First, application of the distributive-phrasing canon establishes that "settling the member's estate" is the sole purpose for exercising the member's rights where, as here, "a member who is an individual dies" (as opposed to being adjudged incompetent, which is the other scenario addressed by the statute). *See* Section I.C.1, below.

Second, the plain language of the statute reinforces its distributive-phrasing structure, by differentiating between an executor's exercise of rights in connection with settlement of a deceased "member's *estate*" on the one hand, and a guardian's exercise of rights in connection with "administering the *member's property*" (*not* the *estate's* property) on the other hand. *See* Section I.C.2, below.

Finally, if there were ambiguity in Section 18-705's statutory text (there is not), any such ambiguity should be resolved in favor of an interpretation that construes the scope of executors' rights narrowly, consistent with Delaware LLC law's well-established "pick-your-partner principle," which generally limits membership rights solely to those to whom the other members have agreed (by

contract or by vote) to extend such rights. As the Court of Chancery correctly held, Allan’s estate is *not* a member (the other members did not pick it as a partner), and thus any ambiguity in Section 18-705 should be construed to harmonize with the “pick-your-partner principle” and to limit the executor’s exercise of member rights solely to the purpose of “settling the member’s estate.” *See* Section I.C.3, below.

1. The Distributive-Phrasing Canon Makes Section 18-705’s Meaning Unmistakably Clear

Section 18-705 covers two distinct scenarios, both of which involve the rights of a member’s personal representative but which are otherwise markedly different—an “Executor Scenario” (*italicized below*) and a “Disability Scenario” (*underlined below*):

*If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member’s person or property, the member’s personal representative may exercise all of the member’s rights for the purpose of *settling the member’s estate* or administering the member’s property, including any power under a limited liability company agreement of an assignee to become a member.*

6 *Del. C.* § 18-705.

The Court of Chancery erred when it interpreted Section 18-705, contrary to its plain meaning, as conferring on an *executor of an estate* the authority to exercise the decedent’s former member rights for the purpose of “administering the

member’s property”—improperly applying the language of Section 18-705’s inapplicable *Disability* Scenario to an *Executor* Scenario.

Under the distributive-phrasing canon of statutory interpretation, Section 18-705 first identifies a pair of scenarios (the *Executor* Scenario and the *Disability* Scenario), and then identifies a pair of purposes, with the first purpose (“settling the member’s estate”) correlating to the first scenario (the *Executor* Scenario), and the second purpose (“administering the member’s property”) correlating to the second scenario (the *Disability* Scenario).

A treatise on the LLC Act confirms this construction:

The Delaware LLC Act makes only a very narrow grant of management rights to the decedent’s personal representative; the grant is “for the purpose of settling the member’s estate.” In contrast, the “personal representative” of an incompetent member “may exercise all of the member’s rights for the purpose of... administering the member’s property.”

Carter G. Bishop & Daniel S. Kleinberger, *Limited Liability Companies* § 14.40 (2023) (footnotes omitted) (A744); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 214 (2012) (under the distributive phrasing canon of construction, “Distributive phrasing applies each expression to its appropriate referent”); 2A Norman J. Singer & Shambie Singer, *Sutherland Statutes & Statutory Construction* § 47:26 (rev. 7th ed. 2014) (“Where a sentence contains several antecedents and several consequents, courts read them

distributively and apply the words to the subjects which, by context, they seem most properly to relate.”) (collecting cases).

Thus, in contrast to the statute’s authorization to exercise member rights for the purpose of “settling the *member’s estate*” in the *Executor* Scenario, the statute’s authorization in the *Disability* Scenario refers to “administering *the member’s property*.” In other words, it is *only* under the Disability Scenario, *not* the Executor Scenario, that a member’s personal representative may exercise member rights for the purpose of “administering the member’s property.”

This distributive-phrasing structure is clear from the face of the statute—and it becomes even clearer when one attempts to read the statute *non*-distributively, which yields untenable results. For one, a non-distributive interpretation of the sentence would nonsensically provide that the guardian of a *living* incompetent person may exercise that person’s member rights for the purpose of “settling the member’s estate.” Of course, such a living person does not have an estate that can be settled; the time for settling a member’s estate is *after the member’s death*. See, e.g., 12 *Del. C.* § 2311. Thus, the first-listed purpose (settling an estate) plainly applies only to the first-listed scenario (the Executor Scenario). And naturally, just as a living member has no estate to settle but instead has property to administer, a deceased member no longer owns property to administer—his or her *estate* now owns that property, as discussed further in Section I.C.2 below. Thus, the language

of the second-listed purpose (administering the member's property) makes clear that it applies only to the second-listed scenario (the Disability Scenario).

Neither the Court of Chancery nor Plaintiffs have cited any applicable Delaware authority supporting a non-distributive interpretation of Section 18-705 or ruling that executors have the authority to exercise the powers of members other than for the purpose of settling the estate.⁴ Nor do the Court of Chancery's citations to cases from other jurisdictions support its decision.⁵

The Court of Chancery's erroneous adoption of a *non-distributive* interpretation is inconsistent with Section 18-705's express language.

⁴ *Cf. Gill v. Regency Hldgs., LLC*, 2023 WL 4607070, at *12 (Del. Ch. June 26, 2023) (court permitted decedent's representative (his wife) to exercise membership powers not based on Section 18-705, but because all parties *agreed* that *the representative had become the LLC's majority member* and "in that capacity, had the power to remove and replace directors"), *adopted*, 2023 WL 4761810 (Del. Ch. July 25, 2023); *Dixon v. Joyner*, 2014 WL 3495904, at *3 (Del. Ch. July 14, 2014) (addressed personal representative's responsibilities only in context of settling decedent's estate).

⁵ *See, e.g., Crabapple Corp. v. Elberg*, 153 A.D.3d 434, 435 (N.Y. App. Div. 2017) (finding that executor could exercise decedent's member rights "for the purpose of settling his or her estate," without any mention of any right to administer property for any other purpose); *Andris v. 1376 Forest Realty, LLC*, 213 A.D.3d 923, 924 (N.Y. App. Div. 2023) (same); *Bookhamer v. Karten-Bermaha Textiles Co.*, 2004 WL 7329684, at *3 (N.Y. Sup. Ct. Dec. 14, 2004) (same); *see also Pachter v. Winiarski*, 2021 WL 1794565, at *1-2 (N.Y. Sup. Ct. May 5, 2021) (distinction between settling estate and administering property was not at issue); *Est. of Judith Lindenberg v. Winiarsky*, 2021 WL 1794560, at *1-2 (N.Y. Sup. Ct. May 5, 2021) (same).

2. Section 18-705's Express Terms Further Establish That It Does Not Empower an Executor to Exercise a Deceased Member's Rights to Administer Property

Beyond its clear correlation with the Disability Scenario under the distributive-phrasing canon, Section 18-705's language referring to "administering the member's property" does not fit with the Executor Scenario even simply according to its plain terms.

In the Executor Scenario, there is no existing "*member's property*"—instead, there is a deceased member's *estate*: the member's "personal property," including any interests in LLCs, "transfers by operation of law to the deceased member's estate." OP24. Upon Allan's death, what was once *his* property became *estate* property—and the estate is decidedly *not* a member of SG Windsor (OP25), so the notion of "member's property" has no application, and Section 18-705's authorization to exercise rights for the purpose of "administering the *member's property*" would have no scope or application in the Executor Scenario. It *does*, of course, have scope in the Disability Scenario: The authority to exercise member rights for the purpose of administering the member's property has meaning (and makes sense) *if the member has been adjudged incompetent but remains alive and owns his or her property*.

By contrast, if the legislature intended the Executor Scenario to include "administering property" as a permitted purpose of exercising a deceased

member's rights, it readily could and should have referred to "administering the *estate's* property." It decidedly does not.

3. Section 18-705 Should Be Construed To Accord with the "Pick-Your-Partner Principle"

Finally, construing Section 18-705 to confer on an executor rights that are broader than those expressly articulated by the legislature in the statute's distributive-phrasing framework is improper for the additional reason that it runs afoul of the general principal that LLC members have the right to choose their fellow members. *See, e.g., Achaian, Inc. v. Leemon Fam. LLC*, 25 A.3d 800, 804 n.14 (Del. Ch. 2011) ("one generally is entitled to select his own business associates in a closely held enterprise, like an LLC"); *Eureka VIII LLC v. Niagara Falls Hldgs. LLC*, 899 A.2d 95, 115 (Del. Ch. 2006) ("The policy that underlies § 18-702(b)(3) is that 'it is far more tolerable to have to suffer a new passive co-investor one did not choose than to endure a new co-manager without consent.'") (quoting *Milford Power Co., LLC v. PDC Milford Power, LLC*, 866 A.2d 738, 760 (Del. Ch. 2004)). This fundamental principle "is often called the 'pick-your-partner principle.'" OP23. This principle is well-understood and important in this context: "It makes sense that the LLC Act would require formal member action to accept a new business partner, rather than contemplating *de facto* membership or the constructive admission of assignees." *In re Carlisle Etcetera LLC*, 114 A.3d 592, 601 (Del. Ch. 2015).

The Court of Chancery’s adoption of an overbroad interpretation of the rights conferred on executors under Section 18-705 undermines this “pick-your-partner principle” to the extent it allows executors of *non-member* estates to act as *unpicked* partners, wielding certain rights that the estate, a *non-member assignee*, otherwise does not have. Consistent with the “pick-your-partner principle,” the legislature was duly circumspect in deeming estates assignees and not members, and in according executors the authority to exercise member rights solely for the purpose of “settling the member’s estate,” and no more.

The Court of Chancery acknowledged that the pick-your-partner principle “is an important default rule in LLC law,” but then went on to reason that the pick-your-partner principle “is not mandatory” and cannot “override the specific language of Section 18-705.” OP48. That reasoning, however, does not justify the Court of Chancery’s over-expansive interpretation of Section 18-705, which improperly misconstrues the statute’s Executor Scenario as encompassing “administering the member’s property.” Even accepting that the “specific language of Section 18-705” can override the pick-your-partner principle, that “specific language” establishes only one permissible purpose for exercising member rights in the Executor Scenario: the purpose of “settling the member’s estate.” Reading the statute’s specific language under the distributive-phrasing canon leaves no room for doubt on that point—but even if there were room for

doubt, any such doubts should be resolved in favor of honoring the “important default rule in LLC law” that LLC members are entitled to pick their partners.

In further accord with these principles, the statutory text of Section 18-705 separately makes clear that an estate does not automatically assume all the powers of membership, by expressly specifying that an estate may exercise “any power *under a limited liability company agreement* of an assignee to become a member.” 6 *Del. C.* § 18-705 (emphasis added). By contrast, where, as here, the estate has no such power under the LLC’s operating agreement, the estate does *not* automatically accede to membership or to all-purpose member rights, but rather is confined to exercising rights for Section 18-705’s specifically stated purpose under the Executor Scenario: “settling the member’s estate.”

Again, treatise analysis of Section 18-705 has recognized this point:

Does the estate (and, through it, the heirs) simply succeed to membership, “exercis[ing] all of the [deceased] member’s rights” including management rights? The answer is no, for at least two reasons. First, the statute does not make an open-ended grant of rights to the decedent’s personal representative. To the contrary, that representative has rights only “for the purpose of settling [the] estate.” This limited grant of rights hardly supports the notion that the estate (and the heirs as well) may participate in management *ad infinitum*. Second, if the phrase “all of the member’s rights” suffices to empower the estate to become a member, why does the statute expressly include “any power *under a limited liability company agreement* for an assignee to become a member”? The emphasized language suggests that the

estate has no greater rights than a living member to foist a new member on the LLC.

Bishop & Kleinberger § 14.40 (alterations in original) (A743). Consistent with this analysis, the Court of Chancery correctly recognized that Allan's estate does *not* have a membership interest in SG Windsor. OP20-30. Indeed, in reaching that holding and thereby rejecting Steven's core claim, the Court of Chancery specifically cited and quoted the treatise analysis above. OP25 n.56.

But the Court of Chancery erred in then straying from the treatise's recognition that the decedent's personal representative "has rights only 'for the purpose of settling [the] estate.'" Bishop & Kleinberger § 14.40 (alteration in original) (A743). The Court of Chancery recognized that the treatise provides "support" for interpreting Section 18-705 under the distributive-phrasing canon but then claimed that the "leading treatise on Delaware LLCs does not share that view." OP38. Contrary to the Court of Chancery's statement, however, the Symonds & O'Toole treatise the court went on to cite in fact describes Section 18-705 with the *same distributive-phrasing structure contained in the statute itself*:

Section 18-705 of the DLLC Act provides that the personal representative of an individual member who has died or been adjudged by a court of competent jurisdiction incompetent to manage his or her person or property, may exercise all of the member's rights for the purpose of

settling the member's estate or administering the member's property.

OP38 n.73 (quoting Robert L. Symonds, Jr. & Matthew J. O'Toole, *Symonds & O'Toole on Delaware Limited Liability Companies* § 5.04[C][1], at 5-56 (2d ed. 2019)). Far from refuting the statutory text's plain meaning under the distributive-phrasing canon, the treatise language directly *tracks* the statute's distributive-phrasing structure.

CONCLUSION

For the foregoing reasons, the Court of Chancery's Post-Trial Opinion should be modified with respect to its interpretation of the permitted purpose for which an executor may exercise a deceased member's rights.

OF COUNSEL:

Jason Cyrulnik
Paul Fattaruso
Matthew Henken
CYRULNIK FATTARUSO LLP
55 Broadway, Third Floor
New York, New York 10006
(646) 844-2466

/s/ Rudolf Koch
Rudolf Koch (#4947)
Daniel E. Kaprow (#6295)
RICHARDS, LAYTON & FINGER, P.A.
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700

Counsel for Appellant, Jane H. Goldman

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