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Case Number 166,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JANE H. GOLDMAN,

Defendant Below–Appellant,

v.

STEVEN GURNEY-GOLDMAN, as Executor of 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

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NATURE OF PROCEEDINGS

Section 18-705 of the Delaware LLC Act states in unambiguous terms that when a member dies, "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." The most natural reading of this language grants executors the authority to exercise member rights for either purpose. That is the interpretation that the Court of Chancery endorsed, and the one that this Court should affirm.

Plaintiffs-Appellees sought declaratory relief regarding the governance of SG Windsor, LLC, a Delaware LLC that owns 50% of Solil—the entity responsible for managing the Goldman family's multi-billion-dollar real estate empire. Ownership of the real estate empire was split among the four children of the empire's founder, Sol Goldman. Each sibling branch owns partial interests in the family real estate properties, and all four siblings owned a 25% interest in SG Windsor.

When Allan Goldman, one of the four children, died in 2022, Section 18-705 of the Delaware LLC Act was triggered. That statute empowers Allan's executor, Steven Gurney-Goldman ("Steven"), to exercise all of the rights that Allan, the deceased member of SG Windsor, possessed for the purpose of settling Allan's estate or administering Allan's property. Appellant Jane Goldman ("Jane"), Allan's sister and a surviving member of SG Windsor, has subverted Steven's exercise of his statutory rights and his fiduciary duties as executor.

Steven, joined by Amy Goldman-Fowler ("Amy"), another member of SG Windsor and Allan's sister, initiated this action to vindicate Steven's rights as executor and Amy's rights as a member of SG Windsor. Following a trial in May 2024, the Court of Chancery held that Section 18-705 means what it says. The plain text, structure, and context of Section 18-705 confirm that a personal representative of a deceased member may exercise that member's rights not only to settle the member's estate but also to administer the member's assets. Jane now appeals, seeking to restrict Steven's authority to only the final act of settlement despite the statute's express authorization of both purposes.

The Court of Chancery's interpretation is the only one that achieves a commonsense result by giving effect to each word and clause of the statute. And it is the only interpretation that permits an executor to discharge his fiduciary duties, which requires administering the decedent's property prior to the final act of settlement. While Delaware courts have not interpreted the scope of the authority granted to personal representatives under Section 18-705, every court outside of Delaware interpreting substantially similar statutory language has agreed with the Court of Chancery's interpretation. Reversing the Court of Chancery would make Delaware the only state to curtail a personal representative's authority notwithstanding a plainly broad grant of statutory authority. And in all events, the complex nature of Allan's estate, which is principally comprised of illiquid partial

interests in real estate and which may take years to settle, best illustrates why an executor must be authorized to administer those assets before a final settlement.

The analysis need go no further. When, as here, ordinary meaning is unambiguous, the Court does not need to resort to canons of interpretation or legislative history. Jane's efforts to muddy the statutory waters fail. She first invokes the so-called "distributive phrasing" canon of interpretation, which does not derive from Delaware precedent and, in all events, is an improper method to determine the meaning of Section 18-705 given its language and structure. Nor does the "pick-your-partner" principle, as a general non-mandatory guideline, displace the unambiguous text of a statute, especially when, as here, the General Assembly has decided to balance other legitimate policy concerns, including the desire to treat a member fairly following an adverse life event. Far from alleviating such concerns, Jane's cramped reading of Section 18-705 would instead violate the pick-your-partner principle.

Finally, insofar as the Court finds legislative history instructive, it, too, supports the Court of Chancery's reading of Section 18-705. The Court of Chancery painstakingly traced early limited partnership statutes from 1673 through the present. Notwithstanding recent efforts elsewhere, including in the revised model codes, to curtail the powers of a personal representative, the General Assembly has time and again rejected such invitations. This Court should affirm.

SUMMARY OF ARGUMENT

I. **Denied.** The Court of Chancery correctly held that 6 *Del. C.* § 18-705 unambiguously grants Steven Gurney-Goldman, as executor of the estate of Allan H. Goldman, authority to exercise all member rights in SG Windsor for the purposes of settling Allan's estate or administering Allan's property.

(a) The plain meaning, structure, and context of Section 18-705, informed by the ordinary duties of an executor, confirm that the personal representative of the estate of a deceased member is authorized to exercise the member's powers for the purposes of settling the member's estate or administering the member's property.

(b) The distributive-phrasing canon—the sole interpretive tool Jane claims supports her reading—cannot override Section 18-705's clear meaning and, in any event, is inapplicable to Section 18-705 because the statute lacks the structural features necessary for the canon's application. The canon requires an equal number of antecedents and consequents that allow for one-to-one matching, but Section 18-705 contains two antecedents (the member dies or is adjudged incompetent) and only one consequent (the "member's personal representative may exercise all of the member's rights"). And, the canon is appropriate only where an ordinary, disjunctive reading leads to contradictory results, but there is

no contradiction between executors having authority to both settle estates and administer property, as these are complementary aspects of estate management.

(c) Jane's alternative argument—that the "pick your partner" principle dictates a restrictive reading—stands statutory interpretation on its head. A general non-mandatory policy does not override unambiguous language in a statute. And, as the Court of Chancery took pains to detail, the evolution of Section 18-705 (and its corollary provision in the Delaware Limited Partnership Act) reflects a set of deliberate legislative decisions by the General Assembly to broaden—*not* restrict—the powers of the personal representative. Op. 49-60. Jane does not even attempt to rebut this analysis. And in all events, Jane's restrictive reading is itself incompatible with the pick-your-partner principle.

COUNTERSTATEMENT OF FACTS

A. The Goldman Family Real Estate Empire

Sol Goldman amassed what once constituted the largest privately held real estate empire in New York City. Op. 2. When he died in 1987, one-third of his estate went to his surviving spouse, Lillian, and the remainder was divided equally among his four children: Allan Goldman, Diane Goldman Kemper, Amy Goldman Fowler, and Jane Goldman. Op. 2-4.

The real estate properties in the Goldman family empire are owned by a number of entities but are all managed by a single property manager, Solil, a New York limited liability company. Op. 4-5. Solil handles all aspects of property management including, among other things, rent collection, maintenance, and lease renewals. Op. 5. Solil has no written operating agreement. Op. 5. It is equally owned by two members—SG Windsor, LLC, a Delaware limited liability company, and SG Empire, a New York limited liability company. Op. 5. SG Windsor likewise has no written operating agreement. Op. 6.

SG Windsor (f/k/a Mill Neck L.L.C.) was initially owned entirely by Lillian. Op. 6. After Lillian's death in 2002, her interest in SG Windsor was divided equally among Allan, Diane, Amy, and Jane. Op. 6.

Between 1987 and Allan's death in 2022, major decisions at Solil required the input of all four siblings. Op. 7.

B. Allan's Estate

Following Allan's death in 2022, Steven was appointed executor of his father's estate (the "Estate"). Allan's Will sets out the powers of his executor. A76. Within the subsection titled "Authority to Deal with Partnerships or Other Entities," Allan expressly "grant[ed] to [his] Executor[] the fullest powers and authority to settle and liquidate" his "interest in any partnership or other entity forming part of [Allan's] estate." A76; Op. 8. Allan further "authorize[d] [his] Executor to continue for such period of time as they deem desirable the operation of any business in which [Allan] was engaged at the time of [his] death, . . . and in connection therewith: to take part in the management of any such business." A76; Op. 8.

Settling the Estate is highly complex. The Estate is largely illiquid. It is comprised primarily of partial interests in real estate properties jointly owned with SG Windsor's surviving members, all of which are managed by Solil. *See* Op. 9. And because SG Windsor owns 50% of Solil, *see* Op. 5, actions taken by SG Windsor directly affect the Estate's assets. Meanwhile, many of the Estate's partial interests in real estate holdings are part of Lillian's estate and her marital trust. And although Lillian died over 20 years ago, her estate—of which Jane, Diane, and Amy are co-executors—has yet to be settled. Op. 4.

C. Section 18-705

Upon Allan's death in 2022, Section 18-705 of the Delaware LLC Act was triggered. That provision provides, in relevant part:

> 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 (emphasis added).

D. The Court of Chancery Endorsed Plaintiffs' Interpretation Of Section 18-705

In November 2023, Plaintiffs filed the underlying action, seeking declaratory relief under 6 *Del. C.* § 18-110 regarding the governance structure of SG Windsor. Op. 1. Among other things, Plaintiffs sought a declaration that, under Section 18-705 of the Delaware LLC Act, Steven may exercise all governance rights that Allan had as a member of SG Windsor for the purpose of administering and settling the Estate. Op. 31. Meanwhile, Jane offered a cramped reading of the statute that would have afforded the personal representative only the authority to exercise member rights to the extent "necessary" to settle the member's estate. Op. 31, 38.

Trial. The Court of Chancery conducted a one-day trial in May 2024. Op. 2. At trial, the Court heard and credited testimony from Steven regarding his "extensive efforts to settle his father's estate." Op. 9. The Court also heard extended testimony

concerning Steven's role as a fiduciary, *see, e.g.*, A214, 219-220, and the challenges he faced in obtaining information requisite to manage the Estate, *see, e.g.*, A218. Notwithstanding Steven's "extensive efforts to settle his father's estate," "it remains open." Op. 9.

Post-Trial Opinion. In a 66-page post-trial opinion issued in July 2024, the Court of Chancery held that Steven was entitled as personal representative of the Estate to "exercise the member rights associated with the LLC interest for the purpose of administering and settling the estate." Op. 1. The Court expressly found that "[o]nly Steven's interpretation" of Section 18-705 "is reasonable." Op. 38. That was plain on the face of the statute, Op. 48, and it was consistent with the ordinary understanding of what it means to be an executor of an estate. As the Court observed, "handling an estate requires not only ultimately settling the estate, but also estate administration." Op. 38. The Court of Chancery recognized that "[w]hatever rights the executor can exercise remain subject to the ceiling that Section 18-705 imposes: they have to be used for a proper purpose of either settling an estate or administering the former member's property." Op. 47.

Recognizing that the issue of interpreting the scope of Section 18-705 was one of first impression in Delaware, the Court:

- conducted a robust corpus linguistics analysis of what it means to "administer" an estate, Op. 39-42;

- situated Section 18-705 within the broader context of the Delaware LLC Act, Op. 33 n.69;
- traced the legislative history of executor rights within the Delaware Partnership Act, which uses similar language, and the Delaware LLC Act, Op. 50-60;
- considered Section 18-705 in light of general policy goals in Delaware law, including the pick-your-partner principle, fairness to a member who has died or suffered a disability, and Delaware's contractarian approach to entity law, Op. 44-60; and
- considered the treatment of substantially similar statutes in other states, which uniformly enforce the rights of personal representatives seeking to exercise deceased members' rights, Op. 43-45, 44 nn.85-86.

So doing, the Court rejected Jane's proffered interpretation of Section 18-705 as "not a reasonable reading." Op. 44. As Jane would have it, "an executor could not exercise member-level rights for the bulk of what an executor has to do." Op. 44. The Court found Jane's sole authority—a single treatise—too insubstantial a reed on which to conclusively resolve what Section 18-705 means. Op. 38.

E. Jane Appeals

Jane now appeals the portion of the Court of Chancery's decision interpreting the scope of Section 18-705.

ARGUMENT

I. THE COURT OF CHANCERY PROPERLY CONCLUDED THAT SECTION 18-705 AUTHORIZES A DECEASED MEMBER'S PERSONAL REPRESENTATIVE TO EXERCISE ALL OF THE MEMBER'S RIGHTS FOR THE PURPOSE OF SETTLING HIS ESTATE OR ADMINISTERING HIS PROPERTY

A. Question Presented

Did the Court of Chancery properly conclude that 6 *Del. C.* § 18-705 authorizes the personal representative of an individual member who has died to exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property? This issue was raised and decided below. Op. 31.

B. Scope Of Review

Review of the Court of Chancery's interpretation of a statute is plenary. *Del. Bd. of Med. Licensure & Discipline v. Grossinger*, 224 A.3d 939, 951 (Del. 2020). When interpreting a statute, the Court's goal is "to ascertain and give effect to the intent of the legislators, as expressed in the statute." *Dir. of Revenue v. Verisign, Inc.*, 267 A.3d 371, 377 (Del. 2021) (citation omitted). "If the plain statutory text admits only one reading," the Court must apply it. *Id.* Only if there is a legitimate ambiguity will the Court resort to canons of statutory construction and legislative history. *Id.* But "[t]he fact that the parties disagree about the meaning of [a] statute does not create ambiguity." *Chase Alexa, LLC v. Kent Cnty. Levy Ct.*, 991 A.2d 1148, 1151 (Del. 2010).

C. Merits Of Argument

The plain text, structure, and context of Section 18-705 confirm that a personal representative of a deceased member may exercise that member's rights not only to settle the member's estate but also to administer the member's property. Because the plain ordinary meaning is unambiguous, Jane's resort to interpretive aids is unnecessary. And in all events, the distributive-phrasing canon is ill-suited to the task. Because the text does not support Jane's arguments, she tries to dodge it by invoking the "pick-your-partner" principle. But far from supporting her argument, that principle undermines Jane's position. In sum, all the relevant indicia of statutory meaning point in the same direction and confirm the Court of Chancery's construction.

1. Section 18-705's Plain Language Grants Executors Broad Authority To Exercise Member Rights For Either Estate Settlement Or Property Administration

Under 1 *Del. C.* § 303, statutes are "read with their context and shall be construed according to the common and approved usage of the English language." *Accord Moskal v. United States*, 498 U.S. 103, 108 (1990) ("In determining the scope of a statute, we look first to its language, giving the 'words used' their 'ordinary meaning.'" (citations omitted)). Here, the ordinary meaning of the statute is clear: Allan was a "member who is an individual" of SG Windsor. 6 *Del. C.* § 18-705. When he "die[d]," Steven became his "personal representative." *Id.* Under

the straightforward terms of the statutory language, Steven therefore "may exercise all of [Allan]'s rights for the purpose of settling [his] estate or administering [his] property." *Id.*

That reading of Section 18-705 is not only the most textually natural; it is also the only one that achieves a commonsense result by giving effect to each word and clause. It is undisputed that Section 18-705 empowers Steven at least to "exercise all of [Allan]'s rights for the purpose of settling [his] estate." 6 *Del. C.* § 18-705. But giving the personal representative of a deceased member the power to settle the estate without including the neighboring statutory power to "administer[] the member's property," *id.*, would be incoherent at best and likely self-defeating. To "settle" an estate is "to put in order; esp., to deal with all the details of a business or of someone's money or property so that nothing remains to be done." *Black's Law Dictionary* (12th ed. 2024); *accord Oxford English Dictionary* (2d ed. 1989) (defining "settle" as "to arrange for the disposal of one's property, the payment of one's debts, etc."); *Webster's Third New Int'l Dictionary* (1976) ("to arrange for proper disposal of on death"). As a matter of both language and common understanding, it would be practically impossible to "settl[e]" an estate without "administering the . . . property" in that estate. 6 *Del. C.* § 18-705; *see, e.g.*, *Oxford English Dictionary* (2d ed. 1989) (defining "administer" as "to manage and dispose of the goods and estate of a deceased person"). There is thus every reason to

conclude that Section 18-705 grants the personal representative of a deceased LLC member authority to "exercise all of the member's rights for the" distinct but related purposes of "settling the member's estate or administering the member's property," 6 *Del. C.* § 18-705—which, after all, is what the statute says.

Caselaw interpreting the roles of executors likewise speaks with one voice that executors must have the authority to administer the decedent's property prior to settling the estate. *See, e.g.*, *Dixon v. Joyner*, 2014 WL 3495904, *3 (Del. Ch. July 14, 2014) (confirming the personal representative is "responsible for compiling the inventory of Decedent's estate, managing the Decedent's assets, and paying the Decedent's debts"); *In re Est. of Brenneman*, 2021 WL 4060389, *2, *5 & n.50 (Del. Ch. May 28, 2021) (personal representative properly "continued in her management role" of decedent's real estate LLC prior to its sale); *In re Est. of Hedge*, 1984 WL 136921, *3 (Del. Ch. Feb. 8, 1984) (administration requires "reduc[ing] the decedent's personal assets to possession, pay[ing] the debts of the estate, and distribut[ing] the balance to those entitled to it"); *see also* 31 Am. Jur. 2d Executors and Administrators § 404 (Paul M. Coltoff et al. eds. 2d ed. 2025) ("The executor or administrator has the duty, under the supervision of the probate court, to preserve, protect, and manage the property of the estate." (footnotes omitted)); 34 C.J.S. Executors and Administrators § 209 (Francis C. Amendola et al. eds., 2025) (an executor's duties include "the orderly and speedy administration, liquidation, and

settlement of the estate"). Only after a decedent's property has been "fully administered" can "[a] final settlement" occur. 34 C.J.S. *Executors and Administrators* § 917. As the Court of Chancery observed, Jane's reading would prohibit an executor from "exercis[ing] member-level rights for the bulk of what an executor has to do," restricting the executor only to exercising "member-level rights for the final act of settlement." Op. 44. It would also penalize executors administering estates with illiquid assets, preventing them from effectively managing those assets prior to final settlement. Nothing in the text or purpose of the statute suggests such an unlikely result.[1]

The structure of Section 18-705 reinforces Plaintiffs' position. After stating that a personal representative of a deceased or incompetent LLC member "may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property," Section 18-705 adds the clause "*including any power under a limited liability company agreement of an assignee to become a member*." 6 *Del. C.* § 18-705 (emphasis added). As the Court of Chancery held and

[1] Allan's complex estate illustrates why Section 18-705 grants executors the authority to exercise member rights for both purposes. The estate consists largely of a 25% share in illiquid real estate holdings comprising the Goldman family empire. Nearly all of this real estate is managed by Solil, a member-managed LLC with no operating agreement that, in turn, is half-owned by SG Windsor. Actions taken by SG Windsor directly affect the management of properties comprising the vast majority of the Estate—and thus the *value* of the Estate.

neither side disputes on appeal, the estate of a deceased member becomes "an assignee" of the LLC. *Id.*; *see* Op. 25-26. But a member determined to be incompetent does not lose status as an LLC member. The sole treatise that Jane relies on confirms this distinction, explaining that instead, the personal representative of an incompetent member may exercise "the member's right to participate in management, and, unlike the estate situation, there is *no issue of conveying management rights to an assignee*. The incompetent member remains a member, and the management rights continue to belong to the incompetent." Carter G. Bishop & Daniel S. Kleinberger, *Limited Liability Companies* § 14.40 (2024) (A744) [hereinafter *Bishop & Kleinberger*] (emphasis added). Thus, the reference to "an assignee" in Section 18-705's "including" clause necessarily must correspond to the power of a personal representative of a deceased member, not an incompetent member.

That understanding of the "including" clause further confirms that all of the language in Section 18-705 following "exercise all of the member's rights for the purpose" applies to the personal representative of a deceased member like Steven. 6 *Del. C.* § 18-705. The most natural reading of the "including" clause is that it modifies its immediate prior antecedent: "administering the member's property." *Id.*; *see Facebook, Inc. v. Duguid*, 592 U.S. 395, 396 (2021) (describing the grammatical "rule of the last antecedent"). Under that view, it is unmistakable that

the grant of authority to "administer[] the member's property" must apply to the personal representative of a deceased member, because that authority must "includ[e]" the power of "an assignee to become a member" under an LLC agreement—a power that, as just explained, can only belong to the personal representative of a deceased member. 6 *Del. C.* § 18-705.

Even if the "including" clause were understood to modify the full phrase "exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property," *id.*, it would still support Steven's position. Jane's contrary interpretation would require the grammatically impermissible reading that the "including" clause applies only to the first purpose (settling) and not to the second purpose (administering). After all, "it would be odd to apply the modifier to just one part of the cohesive clause." *Facebook*, 592 U.S. at 396; *see also Yellen v. Confederated Tribes of Chehalis Rsrv.*, 594 U.S. 338, 371 (2021) (Gorsuch, J., dissenting) ("A clause that leaps over its nearest referent to modify every other term would defy grammatical gravity and common sense alike."). Jane does not even attempt to reconcile this gap in her interpretation.

Plaintiffs' interpretation is likewise reinforced by the broader statutory context. Had the General Assembly intended Jane's interpretation, it could easily have drafted Section 18-705 thusly:

- If a member who is an individual dies, the member's personal representative may exercise all of the member's rights for the purpose of settling the member's estate.

- If a court of competent jurisdiction adjudges a 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 administering the member's property.

When the General Assembly intended a structure of "if A, then B; if not A, then C," as Jane urges, it has drafted accordingly. For example, Section 18-607(b) of the Delaware Code concerning limitations on distributions to LLC members explicitly distinguishes between the following two situations:

- A member who receives a distribution in violation of subsection (a) of this section, and who *knew* at the time of the distribution that the distribution violated subsection (a) of this section, *shall be liable* to a limited liability company for the amount of the distribution.

- A member who receives a distribution in violation of subsection (a) of this section, and who *did not know* at the time of the distribution that the distribution violated subsection (a) of this section, *shall not be liable* for the amount of the distribution.

6 *Del. C*. § 18-607(b) (emphasis added). The General Assembly thus knows how to signal clearly when it speaks of separate and distinct scenarios. The fact that the General Assembly did not use a disparate structure for Section 18-705 is thus presumed to be both intentional and significant as a matter of statutory interpretation. *In re Verizon Ins. Coverage Appeals*, 222 A.3d 566, 578 n.77 (Del. 2019) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts

intentionally and purposely in the disparate inclusion or exclusion." (citation omitted)).

There is scant case law in Delaware addressing Section 18-705, which is why the Court of Chancery observed that the scope of the provision presented an issue of "first impression." Op. 31. But even the few cases that have discussed Section 18-705 do not support Jane's strained reading. *See, e.g.*, *Gill v. Regency H'ldgs, LLC*, 2023 WL 4607070, *4 (Del. Ch. June 26, 2023) (following the death of a member in a real estate holding company, his "property—including his majority membership interests in Regency—passed to his wife," who was his personal representative), *report and recommendation adopted*, 2023 WL 4761810 (Del. Ch. July 25, 2023); Transcript at 31, *Llamas v. Titus*, C.A. No. 2018-0516-JTL (Del. Ch. Feb. 19, 2019) (observing that Section 18-705 contemplates "some universe of member's rights that the administrator gets to exercise").

Meanwhile, appellate courts and courts of last resort in other jurisdictions that have considered the scope of statutes containing substantially similar language to that of Section 18-705 have concluded that an executor can exercise a member's rights for *both* purposes. *See Holdeman v. Epperson*, 857 N.E.2d 583, 587-88 (Ohio 2006) (interpreting then-operative Ohio Code § 1705.21); *Friedberg v. Hague Park Apartments Ltd. P'ship*, 2001 WL 34157592, *6 (Va. Cir. Ct. Dec. 3, 2001) (interpreting Virginia Limited Partnership Act § 50-73.48). And while Jane baldly

asserts that "the Court of Chancery's citations to cases from other jurisdictions" do not "support its decision," Jane Br. 14, she fails to address the Court of Chancery's citations to both the Ohio Supreme Court decision in *Holdeman* and the Virginia Court of Appeals decision in *Friedberg*, *see* Op. 44 nn.85-86.

> Ohio's then-operative statute is a near carbon copy of Section 18-705:
>
> > If a member who is an individual dies or is adjudged an incompetent, his executor, administrator, guardian, or other legal representative may exercise all of his rights as a member for the purpose of settling his estate or administering his property, including any authority that he had to give an assignee the right to become a member.

Ohio Code § 1705.21 (repealed 2022). The Supreme Court of Ohio expressly "h[e]ld that an executor of the estate of a deceased member of a limited liability company has all rights that the member had prior to death, for the limited purpose of settling the member's estate or administering his property." *Holdeman*, 857 N.E.2d at 588; *see also Kellogg v. Kellogg*, 19 N.W.3d 306 (Iowa Ct. App. 2024) (contrasting the "expansive" language of Ohio's statute (which mirrors Section 18-705) as interpreted in *Holdeman* with the more limited language in Iowa's law); *accord Smith v. Lucas*, 2022 WL 4233767, *7 (Ill. App. Ct. Sept. 14, 2022) (reading *Holdeman* as authorizing the executor to exercise the member's rights "for the 'limited purpose of settling the member's estate or administering his property'" (citation omitted)).

Virginia's Limited Partnership Act likewise mirrors the structure of Section 18-705:

> If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incapacitated, the partner's executor, administrator, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property including any power the partner had to give an assignee the right to become a limited partner.

Va. Code Ann. § 50-73.48. An intermediate appellate court there confirmed that the "only limit upon the executor's assumption of the powers of a limited partner is that they must be exercised for the purpose of settling the decedent's estate or 'administering his property.'" *Friedberg*, 2001 WL 34157592, *6.

Contrary to Jane's suggestion, Jane Br. 14 n.5, jurisprudence from New York interpreting the nearly identical statute, N.Y. Ltd. Liab. Co. Law § 608, expressly confirms the broad powers afforded to the personal representative. The appellate court in *Crabapple Corp. v. Elberg* interpreted Section 608 to authorize the "co-executors of the estate" to "act as co-managers of the LLCs," suggesting they could do far more than just settle the estate. 153 A.D.3d 434, 435 (N.Y. App. Div., 1st Dep't 2017); *see also Andris v. 1376 Forest Realty, LLC*, 213 A.D.3d 923, 924 (N.Y. App. Div., 2d Dep't 2023) (confirming personal representative of estate could seek dissolution of the LLC). And, in *Estate of Lindenberg v. Winiarsky*, the court was clear that the personal representative of the deceased LLC member "assumed the membership responsibilities" of the deceased member "pursuant to [Section 608]."

2021 WL 1794560, *2 (N.Y. Sup. Ct. May 5, 2021); *accord Pachter v. Winiarski*, 2021 WL 1794565, *2 (N.Y. Sup. Ct. May 5, 2021) (same).

Against this overwhelming evidence stands Jane's sole authority for her interpretation of Section 18-705: the Bishop & Kleinberger treatise, which offers nothing more than conclusory assertion. *See* Jane Br. 12. The treatise declares that executors may act only to settle estates but engages with none of the interpretive principles that support Steven's reading. And while it readily acknowledges "[t]there is no case law construing [Section 18-705]," *Bishop & Kleinberger* § 14.40 (A742), it divines a restrictive rule from thin air. When the choice is between reasoned statutory interpretation and unsupported academic speculation, Delaware law demands the former.

2. The Distributive-Phrasing Canon Does Not Apply, Nor Can It Change Section 18-705's Plain Meaning

Because the plain text yields only one reading, the Court need not (and should not) resort to statutory canons of interpretation. But even if such interpretive aids were warranted, the so-called distributive-phrasing canon, which is the sole interpretive ground on which Jane relies, does not apply to Section 18-705 because the statute lacks the structural features necessary for the canon's application.

The distributive-phrasing canon "provides that '[w]here a sentence contains several antecedents and several consequents,' courts should 'read them distributively and apply the words to the subjects which, by context, they seem most properly to

relate.'" *Facebook*, 592 U.S. at 407-08 (alteration in original) (citation omitted).[2] The distributive-phrasing canon is a poor interpretive aid for determining the meaning of Section 18-705 for several reasons.

First, the distributive-phrasing canon "has the most force" when "the statute allows for one-to-one matching" between antecedents and consequents. *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 87-88 (2018). Section 18-705 contains two antecedents ("a member who is an individual dies" and "a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property") but only one consequent (the "member's personal representative may exercise all of the member's rights"). 6 *Del. C.* § 18-705. As the U.S. Supreme Court recently explained in *Facebook, Inc. v. Duguid*, when, as here, the statute contains "two antecedents . . . but only one consequent modifier," "the canon's relevance is highly questionable." 592 U.S. at 408. The statute in *Facebook* defined "an autodialer" as "equipment which has the capacity . . . to store or produce telephone numbers ... using a random or sequential number generator . . . ." *Id.* at 402. The Court held that the consequent phrase "using a random or sequential number generator" properly related to both antecedents ("store" and "produce")

[2] The Court of Chancery observed that Jane did not locate this principle in Delaware precedent. Op. 37 n.71. Indeed, Appellees are aware of no Delaware court that has applied the distributive-phrasing canon to aid in the interpretation of a statute.

rather than only the second. *Id.* at 408-09. So too here. Section 18-705's consequent phrase "exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property" relates to both triggering events—death and incompetency. To be sure, that single consequent phrase uses the word "or," but the same was true of the single consequent in *Facebook*. *See id.* The parallelism between the triggering events and scope of authority that Jane reaches for is thus simply not present here.

Second, the distributive-phrasing canon is helpful when a disjunctive reading "would involve a contradiction in terms." *Encino*, 584 U.S. at 88 (2018) (quoting *Huidekoper's Lessee v. Douglass*, 7 U.S. (3 Cranch) 1, 28 (1805) (Marshall, C.J.)). Jane offers as an example a situation in which two meals are offered, one that is vegetarian (tofu) and one that is nonvegetarian (chicken). Jane Br. 2. The vegetarian/non-vegetarian dichotomy is an example in contrasts; a vegetarian could not choose the chicken meal, and it would be a contradiction in terms to read the language otherwise. But here, as explained above, there is nothing contradictory about empowering the personal representative of a deceased member to administer the member's assets; to the contrary, that is precisely what an executor is charged with doing. *See supra* Part I.C.1.[3]

[3] Jane suggests that "the nonvegetarian option" on her hypothetical invitation has to be chicken, Jane Br. 2, but it would seem that a nonvegetarian could also

Indeed, the statute's language affirmatively contradicts Jane's distributive reading because its express language "bespeaks breadth." *Encino*, 584 U.S. at 88. By empowering the member's personal representative to "exercise *all of the member's rights*," 6 *Del. C.* § 18-705 (emphasis added), the General Assembly deliberately granted the personal representative broad authority. Had the General Assembly instead intended Jane's constricted interpretation, it would have used well-known distributive language. *Cf.* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 214 (2012) ("Words like each, *every*, and the compounds with *every*-, can be termed distributive because they pick out the members of a set singly, rather than considering them in the mass."). Instead, the General Assembly chose "all"—a word that supports collective inclusion rather than individual distribution. Finding otherwise would ignore the most powerful evidence of the General Assembly's intent—the text itself.

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choose tofu. The distributive-phrasing canon thus may not apply even in her own example. What the example instead illustrates is that language should be read in context so that it does not create a contradiction. As explained above, there is no contradiction in allowing the personal representative of a deceased member to administer the member's property. Jane's reliance on the premise that the personal representative of an incompetent member will have no occasion to exercise the statutory power to "settle[] the member's estate," Jane Br. 3, fails for similar reasons. Even if she is right about that (and it is not clear that she is, because an incompetent member could of course die), it does not create a contradiction in the situation at issue here and thus does not justify a departure from the statute's plain language.

Finally, resort to the distributive canon should be rejected because it would suggest an unreasonable construction of the statute. *State v. Demby*, 672 A.2d 59, 61 (Del. 1996); *see also Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 71 (1982) ("Statutes should be interpreted to avoid untenable distinctions and unreasonable results whenever possible."). Jane's interpretation injects a hierarchy in which the guardians of incompetent members would seemingly possess broader authority than executors of deceased members. Consider the following hypothetical. Had Allan been declared incompetent prior to his death and Steven appointed his guardian, Steven would have clear authority under Section 18-705 to exercise Allan's member rights to administer his property. No parties dispute that. But as Jane would have it, Allan's death dramatically curtailed Steven's authority, such that he could exercise Allan's member rights only for the purpose of settling Allan's estate, excluding the very administration necessary to protect estate assets.

In either scenario—incapacity or death—the member is no longer able to manage his affairs and thus a fiduciary is appointed. The personal representative may then "exercise *all* of the member's rights" for the two purposes authorized by Section 18-705. But nowhere in the Delaware LLC Act—in its plain text or legislative history—is there the suggestion that a personal representative of a member who has been adjudged to be incompetent should be entitled to exercise a different and broader set of rights than the personal representative of a deceased

member. Jane does not point to any authority that compels that result. Nor does she offer any principled policy reason why the General Assembly would make it so.

3. The "Pick-Your-Partner" Principle Does Not Displace The Plain Text Of Section 18-705

Because the plain text does not support her arguments, Jane tries to dodge it by invoking the "pick-your-partner" principle to justify her cramped reading. While that policy "motivat[es]" the "statutory default rules," *Achaian, Inc. v. Leemon Fam. LLC*, 25 A.3d 800, 804 n.14 (Del. Ch. 2011), as carefully detailed by the Court of Chancery, the General Assembly deliberately balanced other considerations with the pick-your-partner principle in Section 18-705. And in all events, a general policy cannot override the statute's unambiguous language.

To start, the "pick-your-partner" principle is a guideline, not a rule. Delaware's contractarian approach empowers parties to craft their own governance arrangements rather than relying on judicial intervention to impose policy-based limitations. *See Haley v. Talcott*, 864 A.2d 86, 96 (Del. Ch. 2004) ("The Delaware LLC Act is grounded on principles of freedom of contract."); *JER Hudson GP XXI LLC v. DLE Invs., LP*, 275 A.3d 755, 781-82 (Del. Ch. 2022) ("The Delaware Revised Uniform Limited Partnership Act . . . rests on the fundamental principle of freedom of contract."); *accord* 6 *Del. C.* § 18-1101(b) (policy of Delaware LLC Act is to "give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements"). Members can level up by,

for example, inserting provisions in their LLC agreement that restrict new members or require consent for certain actions. Alternatively, an LLC agreement can automatically admit assignees as members—thereby fully rejecting the principle.

What members cannot do is remove the personal representative's right to exercise all of the member's rights for the two purposes authorized by Section 18-705. "When the General Assembly has enacted a statute, that statute embodies Delaware's public policy." *W. Palm Beach Firefighters' Pension Fund v. Moelis & Co.*, 311 A.3d 809, 877 (Del. Ch. 2024). As the Court of Chancery observed, the General Assembly included the phrase "unless otherwise provided in a limited liability company agreement" or language to that effect in over fifty default provisions that an LLC can otherwise modify. *See* Op. 47 n.91. That language is absent from Section 18-705. The General Assembly's omission of such language makes clear that the provision cannot be displaced by private ordering. *In re Verizon Ins. Coverage Appeals*, 222 A.3d at 578 n.77 (discussing *Russello v. United States*, 464 U.S. 16, 23 (1983)); *Russello*, 464 U.S. at 23 ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

Courts are likewise constrained. When a statute is unambiguous, the "courts' own sense of appropriate public policy should not 'usurp the General Assembly's

legislative powers by ignoring plain statutory text.'" *Riad v. Brandywine Valley SPCA, Inc.*, 319 A.3d 878, 888 (Del. 2024) (citation omitted). As a non-mandatory general policy, the pick-your-partner principle cannot independently restrict Section 18-705's unambiguous grant of authority to the personal representative.

Section 18-705 acknowledges the pick-your-partner principle, just not in the overly restrictive way Jane would prefer. As the Court of Chancery explained, the provision "reflects a compromise" between the policy and "a desire to treat a member fairly following an adverse life event." Op. 49. Personal representatives are not granted status as members automatically, although Section 18-705 recognizes that parties can contract to do just that. Meanwhile, the statute grants personal representatives with authority to exercise a member's rights for *specific* purposes so that the personal representatives can fulfill their fiduciary duties.

The legislative history buttresses the plain text of the provision and confirms Delaware's conscious choice to favor executor effectiveness within appropriate constraints. "[N]otwithstanding the consequences for the pick-your-partner principle," the General Assembly has authorized "a steady broadening of the powers afforded to personal representatives." Op. 49.[4]

[4] "The Delaware Act has been modeled on the popular Delaware LP Act." *Elf Atochem N. Am., Inc. v. Jaffari*, 727 A.2d 286, 290 (Del. 1999). Early limited partnership statutes generally provided for dissolution upon a limited partner's death. *See* Eugene A. Gilmore, *Handbook on the Law of Partnerships* 638 (1911). Over

At the same time, since the General Assembly adopted the Delaware LLC Act in 1992, it has repeatedly considered and rejected restrictive approaches that would "dramatically" limit personal representatives' authority along precisely the lines Jane advocates. Op. 59-60. In 2001, for example, the Commissioners responsible for drafting the Revised Uniform Limited Partnership Act (which informed the structure of the Delaware LLC Act) restricted the powers of the executor of a deceased partner, to the following:

> If a partner dies, the deceased partner's legal representative may exercise the rights of a transferee provided in Section 702(c); and for the purposes of settling the estate, the rights of a current limited partner under Section 304.

ULPA (2001 with amendments through 2013) § 704. The accompanying commentary confirms that the legal representative is entitled only to "temporary" "information rights." *Id.* § 704 cmt. The General Assembly did not incorporate these restrictions into Delaware law.

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time, states began conferring special rights for executors, permitting them to continue interests and sue for accountings. *See* James Dunlop, *The General Laws of Pennsylvania* 845 (2d ed. 1849); *Walkenshaw v. Perzel*, 32 How. Pr. 233, 239 (N.Y. Sup. Ct. 1866). The Uniform Limited Partnership Act ("ULPA") of 1916 broadened these rights to grant executors "all the rights of a limited partner for the purpose of settling his estate." ULPA § 21 (1916). The Revised Uniform Limited Partnership Act ("RULPA") of 1976 expanded coverage to any partner and granted broader powers, including "any power the partner had to give an assignee the right to become a limited partner." 6 *Del. C.* § 17-705 (1981). The 1992 Delaware LLC Act extended these rights to LLC members. 6 *Del. C.* § 18-705 (1992).

Five years later, the Commissioners amended the Revised Uniform Limited Liability Company Act to similarly circumscribe the powers of the legal representative of a deceased member to "very limited rights to information" only. ULLCA (2006 with amendments through 2013) § 504 cmt. The General Assembly again did not adopt these restrictions from the model act, evidencing its intent to grant executors broad authority to exercise a member's rights. *See Baldridge v. Shapiro*, 455 U.S. 345, 358 (1982) (legislature's consideration and rejection of restrictive language provides strong evidence of legislative intent); *see also Shell Oil Co. v. Babbitt*, 920 F. Supp. 559, 563 (D. Del. 1996) (same).

In all events, Jane's reading of Section 18-705 (not Plaintiffs') runs afoul of the very pick-your-partner concerns she invokes. She again invokes the Bishop & Kleinberger treatise, which observed that an "estate has no greater rights than a living member to foist a new member on the LLC." Jane Br. 18-19 (citing *Bishop & Kleinberger* § 14.40) (A743). But such concerns are animated regardless of whether the member is incapacitated or deceased. In either scenario, the personal representative is *not* selected by the other members but is nevertheless authorized to exercise the member's rights. If pick-your-partner concerns justified restricting an executor's authority, they would just as readily apply to restrict a guardian's authority. The General Assembly draws no such distinction. Its choice to treat both situations identically under Section 18-705 confirms that the statute's broad

language should be given full effect. Jane again offers no reason why the General Assembly *would* have intended such an illogical distinction.

CONCLUSION

For the foregoing reasons, the Court should affirm the Court of Chancery's Post-Trial Opinion.

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