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IN THE SUPREME COURT OF THE STATE OF DELAWARE

OPERATING ENGINEERS CONSTRUCTION INDUSTRY AND MISCELLANEOUS PENSION FUND, *Plaintiff-Below/Appellant*, v. PIONEER NATURAL RESOURCES COMPANY, *Defendant-Below/Appellee*,	Case No. 368, 2025 Court Below: Court of Chancery of the State of Delaware C.A. No. 2024-0101-SEM

APPELLANT'S OPENING BRIEF

GRANT & EISENHOFER P.A.
Michael J. Barry (#4368)
Christine M. Mackintosh (#5085)
Rebecca A. Musarra (#6062)
William G. Passannante II (#7093)
Demetrius M. Davis (#7188)
123 S. Justison Street, 7th Floor
Wilmington, DE 19801
Tel: (302) 622-7000
mbarry@gelaw.com
cmackintosh@gelaw.com
rmusarra@gelaw.com
wpassannante@gelaw.com
ddavis@gelaw.com

Counsel for Appellant Operating Engineers Construction Industry and Miscellaneous Pension Fund.

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NATURE OF PROCEEDINGS

Plaintiff-Below/Appellant ("Plaintiff") appeals from the Court of Chancery's adoption of a Magistrate's Final Report in a Section 220 action for corporate books and records. At the core of this appeal are certain text messages and emails (the "Concealed Communications") that Defendant-Below Appellee's ("Defendant," "Pioneer," or the "Company") then-CEO, Scott Sheffield ("Sheffield") exchanged with Exxon Mobil Corporation's CEO. Sheffield withheld those communications from Pioneer's Board of Directors (the "Board") during merger negotiations. Pioneer now refuses to produce them to Plaintiff.

On October 10, 2023, Pioneer agreed to merge with Exxon Mobil Corporation ("ExxonMobil") (the "Merger").[1] After the Merger was announced, Plaintiff served a demand for books and records under Section 220 (the "Demand").[2] The Demand sought to investigate potential breaches of fiduciary duty by Pioneer's senior management and its Board in connection with the Merger.[3]

In response to the Demand, the Company agreed to meet and confer.[4] Shortly thereafter, Plaintiff filed a Section 220 complaint to preserve its standing, and the

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[1] A0893.

[2] A0895; A0560-585.

[3] A0895; A0561.

[4] A0896; A0586.

Section 220 litigation was stayed during the parties' negotiations.[5] Between February 6, 2024, and September 18, 2024, the parties met and conferred multiple times and corresponded extensively.[6] As a result of these discussions, Pioneer produced documents responsive to the Demand.[7] However, when Plaintiff requested that Defendant produce, for a specific time period and with respect to specific topics, text messages and emails between Pioneer's former CEO, Scott Sheffield ("Sheffield") and ExxonMobil's CEO Darren Woods ("Woods"), which are within the scope of Informal Board Materials and Officer-Level Materials, Pioneer refused.[8] On September 18, 2024, Plaintiff asked the Court of Chancery to lift the previously imposed stay.[9]

In advance of trial, Plaintiff worked in good faith to limit the number of disputes before the Court of Chancery.[10] For example, rather than seek a broader set of text messages and emails, Plaintiff sought instead narrow topics that closely related to Plaintiff's investigation: the Merger, Sheffield's retirement, ExxonMobil's

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[5] A0896.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

performance, and Pioneer's performance.[11] Plaintiff offered to discuss the relevant time period with the Company; Pioneer did not meaningfully engage with this offer.[12] Nevertheless, in a demonstration of good faith and without any engagement from Pioneer, Plaintiff limited the relevant time period for the emails and text messages Plaintiff sought to June 1, 2023, through the deal announcement, October 11, 2023.[13] As the Court of Chancery later put it, "Plaintiff argues that its demand for electronic communications was 'narrowly circumscribed,' and that is a fair description of Plaintiff's request."[14]

The Court of Chancery held the Section 220 trial on January 9, 2025.[15] During the trial, Pioneer's counsel conceded for the first time that the Concealed Communications are substantive in nature.[16] The trial court issued a Magistrate's Final Report on January 16, 2025,[17] concluding that Plaintiff was not entitled to

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[11] *Id.* Plaintiff also sought text messages and emails relating to an additional topic: an impairment announced by ExxonMobil. However, Pioneer subsequently represented to Plaintiff that the impairment was not discussed in the text messages and emails at issue in this action. For the avoidance of doubt, Plaintiff reserves its rights to seek documents relating to this impairment in any plenary proceeding.

[12] A0896-97.

[13] *Id.* at A0897.

[14] Ex. A.

[15] A0762.

[16] A0818-819.

[17] A0837

further books and records because: (i) Plaintiff had not established a "credible basis" to justify its requested inspection, and (ii) the materials Plaintiff sought were not necessary and essential to Plaintiff's proper purpose.[18]

Plaintiff filed exceptions to the Magistrate's Final Report, which the parties fully briefed.[19] The Court of Chancery heard oral argument on the exceptions on May 20, 2025.[20] Ultimately, the court overruled Plaintiff's exceptions and adopted the Magistrate's Final Report.[21] In so doing, the court concluded that Plaintiff had met the "credible basis" requirement, but was not entitled to additional documents because Plaintiff had not demonstrated that the "targeted scope [that Plaintiff had proposed was] necessary under the circumstances."[22] The court concluded that Plaintiff had not specified what the key information that Sheffield withheld from the Board might be. But Plaintiff necessarily cannot specify the content of information that Sheffield concealed from both the Board and, by extension, Plaintiff. Plaintiff has identified multiple indications that the Concealed Communications document additional wrongdoing, including a text message exchange between Sheffield and

[18] A0855-864; A0878.

[19] Ex. A at 5.

[20] *Id.*

[21] Ex. A at 9.

[22] *Id.*

Woods that Sheffield did provide to the Board in which Sheffield undercut Pioneer's negotiating position.[23]

In affirming the Final Report's scope determination, the Court of Chancery abused its discretion by: (i) conditioning relief upon Plaintiff's completion of an impossible task, and (ii) resting its conclusion, in part, upon an incomplete factual predicate. The Court of Chancery's scope determination should be reversed and remanded.

[23] A0904-905; A0265-266.

SUMMARY OF ARGUMENT

1. The Court of Chancery abused its discretion by adopting the Magistrate's Final Report's scope determination. In so doing, the Court of Chancery articulated an impossible standard for Plaintiff to meet: anticipate with specificity what key information Sheffield withheld from Pioneer's board without having access to the key information that Sheffield withheld from the Board. Plaintiff satisfied the operative pre-SB21 test for access to Informal Board Materials, or, in the alternative, Officer-Level Materials, by identifying a specific need for broader inspection. Pioneer admitted at trial that Sheffield disclosed only a subset of his substantive text message communications with Woods to the Board. The Merger proxy does not disclose this material fact. The record also shows that in an unsupervised text message conversation with the CEO of Pioneer's counterparty during Merger negotiations, Sheffield undercut Pioneer's negotiating position, suggesting that the text messages that Sheffield withheld from the Board contain evidence of additional wrongdoing. Plaintiff has therefore identified "some evidence"[24] that the Concealed Communications are the sole repository of information about a fraud upon the Board.

[24] *KT4 Partners v. Palantir Techs. Inc.*, 203 A.3d 738, 755 (Del. 2019).

2. The Court of Chancery further abused its discretion by apparently concluding that Sheffield did not send "allegedly ill-advised texts" in the context of the purposes for which Plaintiff seeks inspection. Contrary to the Court of Chancery's conclusion, Plaintiff identified a text message conversation between Woods and Sheffield in which Sheffield boasted to Woods that he had undercut Pioneer's negotiating position and then revealed, truthfully, that he had expected to get a deal with Woods done below a range suggested by a Pioneer financial advisor, thereby undercutting Pioneer's negotiating position further.

STATEMENT OF FACTS

A. PARTIES AND RELEVANT NON-PARTIES

1. Plaintiff-Appellant

Plaintiff beneficially owned Pioneer stock at all times relevant to this action.[25]

2. Defendant-Appellee Pioneer

Defendant Pioneer Natural Resources Company was a Delaware corporation with headquarters in Irving, Texas.[26] Pioneer was a large independent oil and gas company that explored for, developed, and produced oil, natural gas liquids, and gas in the Permian Basin in West Texas.[27] On May 3, 2024, ExxonMobil announced that it had completed its acquisition of Pioneer.[28] Until ExxonMobil acquired Pioneer, Pioneer traded on the New York Stock Exchange under the ticker symbol PXD.[29]

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[25] A0880.

[26] *Id.*; A0740 at ¶17.

[27] A0880; A0740 at ¶17.

[28] A0880; A0752 at ¶65.

[29] A0881.

3. Relevant Non-Parties

(a) Sheffield

Scott Sheffield founded Pioneer in the late 1990s and served as its CEO until December 31, 2023, at which point he transitioned into the non-executive role of special advisor to Pioneer's CEO.[30]

(b) Woods

Darren Woods is ExxonMobil's CEO and is Executive Chair of its Board of Directors.[31]

(c) ExxonMobil

ExxonMobil is one of the largest publicly traded petroleum and petrochemical enterprises in the world.[32]

(d) Party A

Party A was a privately held oil and gas producer in the Permian Basin.[33] Party A was roughly half of Pioneer's size.

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[30] A0881; A0740 at ¶18; A0752 at ¶66.

[31] A0881; A0745 at ¶43.

[32] A0881.

[33] *Id.*

B. FACTUAL BACKGROUND

1. Sheffield Exercised Control Of Pioneer

Sheffield controlled and dominated Pioneer at all times relevant to Plaintiff's investigation.[34] He founded the Company in the late 1990s,[35] served as its CEO since its formation[36] and, excepting a brief interruption from 2017 through early 2019, stayed in that role until he stepped down in December 2023.[37] He served as Chairman of the Board from 1999 through February 2019,[38] and as Director through the completion of the Merger.[39] He was a major stockholder, holding shares worth more than $115 million as of March 20, 2023.[40]

Pioneer's Board of Directors (the "Board") deferred to Sheffield's control.[41] In a confidential summary of director conversations regarding CEO succession, the Board spoke of Sheffield in glowing terms, remarking "how challenging it may be

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[34] A0882.

[35] *Id.*; A0015-018; A0740 at ¶¶19, 21.

[36] A0882; A0740 at ¶18.

[37] A0882; A0054.

[38] A0054.

[39] A0882; A0752 at ¶66.

[40] A0882; A0740 at ¶19.

[41] A0882.

for anyone to follow [Sheffield], an icon of the industry and the founder of the [C]ompany."[42]

When Sheffield wanted something to happen at Pioneer, it happened.[43] As discussed below, Sheffield acted as if the rules did not apply to him. He: (i) negotiated for Pioneer's sale without meaningful Board oversight, and (ii) proposed material price terms to a potential counterparty without prior Board approval, including, on at least one occasion, a price term at the very bottom of the possible range with the expectation of getting a deal done below that range.[44]

2. Sheffield's Conflicts Of Interest

As Plaintiff demonstrated at trial and Defendant does not dispute, Sheffield stood to benefit from the Merger.[45] At the time Merger discussions began, Sheffield was planning for retirement.[46] Sheffield stood to make substantially more money—in April 2023, Pioneer represented that it was over $15 million more[47]—if Pioneer entered a change-in-control ("CIC") transaction before he retired.[48] If instead

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[42] A0015-018.

[43] A0882.

[44] A0882; A0883; A0889; A0265-266.

[45] A0883.

[46] A0883; A0742 at ¶34.

[47] A0742 at ¶32.

[48] A0883; A0742 at ¶32.

Sheffield simply retired, or caused Pioneer to acquire a company instead of being acquired, his compensation would be reduced by over $15 million.[49] Sheffield was therefore highly incentivized to cause Pioneer to enter a CIC transaction before his retirement.[50] In late April 2023, Pioneer advertised to the world that Sheffield would retire by the end of 2023;[51] this timeframe left just enough time for Sheffield to execute an abbreviated deal process resulting in his preferred kind of deal with his preferred counterparty.[52] Before his retirement from the CEO role and transition to non-executive special advisor to Pioneer's new CEO (while retaining his CIC benefits) was effective on December 31, 2023, Sheffield was significantly involved in Pioneer's process regarding a potential strategic transaction.[53] On the one hand, Pioneer could attempt to acquire Party A; on the other, Pioneer could be acquired by ExxonMobil.[54] Sheffield, too, had the option of simply retiring before any deal was concluded. Sheffield had millions of reasons[55] to prefer an acquisition of Pioneer by

[49] A0883; A0742 at ¶32.

[50] A0883.

[51] A0743 at ¶35.

[52] A0883.

[53] *Id.*; A0893-894; A0751 at ¶61; A0429.

[54] A0883.

[55] A0883-884; A0742 at ¶32.

ExxonMobil as opposed to either an acquisition of Party A[56] or his retirement without triggering his CIC benefits.[57]

3. The Merger Is The Result Of An Unfair Process

As discussed above, Sheffield was incentivized to favor a CIC transaction before his impending retirement at the expense of stockholder value-maximizing alternatives.[58]

(a) Sheffield Announced His Retirement

On April 21, 2023, the Board unanimously approved the following CEO succession plan: Sheffield would retire as Pioneer's CEO effective December 31, 2023; Richard Dealy ("Dealy"), who was then Pioneer's President and Chief Operating Officer, would succeed Sheffield as Pioneer's president and CEO; and Sheffield would remain a member of the Board.[59] Several days later, on April 26, 2023, Pioneer publicly announced Sheffield's plans to retire, effective January 1, 2024.[60] Sheffield had no authority to approve the Merger.[61] In May 2023, the Board

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[56] A0883-884; A0257 (referencing an "opportunity to potentially acquire [Party A]").

[57] A0883-884.

[58] A0884.

[59] *Id.*; A0742 at ¶34.

[60] A0884; A0743 at ¶35.

[61] A0885.

had made clear that the CEO could only approve transactions valued up to $100 million.[62] The Board reserved for itself the sole authority to approve a company-wide acquisition of Pioneer.[63] Sheffield had no such authority.[64] Further, the Board did not extend authority to Sheffield to unilaterally decide upon and present price terms to potential counterparties.[65]

(b) Sheffield Disloyally Tipped His Hand To His Counterparty By Opening Negotiations With Woods At The Bottom Of The Range He Had Been Advised Was Appropriate, Without Authority From The Board To Do So

By August 2023, the Board was considering two possible transactions: (i) Pioneer's acquisition of Party A,[66] and (ii) ExxonMobil's acquisition of Pioneer.[67] Of those two possible transactions, only the deal with ExxonMobil would trigger Sheffield's CIC benefits.[68] Incentivized to see Pioneer engage in a CIC transaction,

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[62] *Id.*; A0743 at ¶37.

[63] A0885; A0743 at ¶37.

[64] A0885; A0743 at ¶37.

[65] A0885; *see* A0743 at ¶37 and *see* A0184-210 (failing to extend to Sheffield authority to unilaterally decide upon and present price terms to potential counterparties).

[66] A0885; A0257 (referencing an "opportunity to potentially acquire [Party A]").

[67] A0885; A0744-745 at ¶42.

[68] *Id.*

Sheffield began price negotiations with Woods without any authorization from the Board.[69]

Sheffield told the Board that he and Woods had agreed to meet on September 6, 2023.[70] At no point did the Board authorize Sheffield to communicate a specific price term to Woods.[71] On September 6, Sheffield and Woods met to discuss the potential acquisition of Pioneer by ExxonMobil.[72] The Proxy does not identify anyone else as having attended this meeting besides Sheffield and Woods.[73]

Although aware of the meeting, the Board never authorized Sheffield to communicate any specific terms, including price terms, to Woods.[74] Sheffield took the opportunity of the unchaperoned meeting[75] to disloyally tip his hand and anchor negotiations.[76] He told Woods that he would personally support a deal with ExxonMobil at a premium at least 20% above the "at the market" exchange ratio of

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[69] *Id.*

[70] A0886; A0258.

[71] A0886; s*ee* A0249-258 (absence of Board authorizing Sheffield to communicate a specific price term to Woods).

[72] A0886; A0745 at ¶43.

[73] *Id*.; A0745 at ¶43.

[74] A0886; A0249-258.

[75] A0745 at ¶43 (not referencing any other participant or attendant at the meeting, other than Sheffield and Woods).

[76] A0886.

2.14 shares.[77] Sheffield was well aware, and even disclosed to Woods, that the Board had never authorized Sheffield to discuss *any* price terms, including any premium or range of premia.[78]

(c) Sheffield And Woods Continue To Negotiate, Including Over Text And Email

On September 7, 2023, Sheffield updated the Board with respect to negotiations concerning Party A.[79] He also provided a summary of his meeting with Woods, noting that he had told Woods he would support a deal of at least 20% above the 2.14 "at the market" exchange ratio.[80]

About a week later, on September 13, Sheffield told the Board that Pioneer had received a preliminary proposal of deal terms from Party A.[81] As to ExxonMobil, Sheffield told the Board he expected that Woods would respond to him shortly.[82]

On September 18, 2023, Woods sent Sheffield a letter proposing an all-stock merger acquisition of Pioneer by ExxonMobil for a premium of 9% to the Pioneer

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[77] *Id.*; A0745 at ¶43.

[78] *Id.*; A0745 at ¶43.

[79] A0887; A0745 at ¶44.

[80] A0887; A0745 at ¶44.

[81] A0887; A0745-746 at ¶45.

[82] A0887; A0745-746 at ¶45.

closing price on September 15, 2023, at an exchange ratio of 2.185 shares of ExxonMobil common stock per share of Pioneer stock.[83] The letter also indicated that ExxonMobil was "open to considering inviting" one member of Pioneer's Board to join ExxonMobil's Board of Directors.[84]

Over the following days, Sheffield exchanged text messages with Woods concerning a potential merger.[85] Sheffield provided copies of a subset of those text messages to the Board.[86] Although Sheffield and Woods engaged in other substantive communications about the Merger—including over text and e-mail—those messages were never provided to the Board (the "Concealed Communications" at the heart of this Section 220 proceeding).[87] The Proxy does not disclose that Sheffield provided the Board with only some of his substantive text message and email communications with Woods.[88] Similarly, the record does not reflect that the Board was aware that Sheffield had withheld some of his substantive text messages and emails with Woods.

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[83] A0887; A0746 at ¶46.

[84] A0887; A0746 at ¶46.

[85] A0888; A0746 at ¶47; A0264-268.

[86] A0888; A0909 n.125; A0746 at ¶47.

[87] A0888; A0746 at ¶47.

[88] *See* A0366-382 (failing to disclose the material fact that Sheffield disclosed only some, but not all, of his substantive text message communications with Woods to the Board).

The text messages that Sheffield *did* provide to the Board include an admission from Sheffield that the premium he unilaterally proposed to Woods at the September 6 meeting—a deal at a premium of at least 20% above the "at the market" exchange ratio of 2.14—was a lowball offer.[89] In a September 20 text exchange, Sheffield told Woods that Pioneer's Board had been advised by several bankers that Pioneer "should always receive a change in control premium . . . [which] has been defined as 25-35%."[90] Sheffield then told Woods, "*I* decided to lower it to 20% when we met. Some bankers have said 20% is at the bottom end of [the premia range for change in control]."[91]

Indeed, the Board *had* received financial advice regarding reasonable premia in a change-of-control deal.[92] In June 2023, Pioneer financial advisor Petrie Partners had advised the Board concerning, among other things, "Implied Transaction Exchange Ratios at Various Premia to Historical Period VWAPs" which contemplated a range of premia from *20-35*%.[93] Pioneer has conceded that this

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[89] A0888.

[90] A0888-889; A0265. Before trial, Pioneer's counsel represented to Plaintiff's counsel that the banker presentations to which Sheffield referred in his text messages were contained at A0211-0248. A0905 n.115.

[91] A0889; A0265 (emphasis added).

[92] A0889.

[93] *Id.*; A0239.

Petrie Partners presentation was one of the banker presentations to which Sheffield was referring.[94] Sheffield's text message exchange with Woods therefore shows that Sheffield—conflicted, unsupervised, and in private, direct negotiations with Pioneer's counterparty—had unilaterally anchored price negotiations at the *very bottom* of the premia range that Pioneer's own financial advisor had proposed.[95]

In the September 20 text exchange, Sheffield also told Woods that he was "shocked" by Woods's premium offer of 9%, explaining that he had expected Woods "to offer around *16%* premium after our meeting at your home *to get a deal done*."[96] Thus, over text message, Sheffield had contemplated potentially reaching a deal *substantially below* the 20% bare minimum premium suggested by a Pioneer financial advisor, anchoring negotiations even lower.[97] In other words, Sheffield had undercut Pioneer's negotiating position.

On September 22, 2023, the Board met and received an update concerning ExxonMobil's proposal and recent discussions with Party A.[98] Pioneer's financial advisors, including Goldman Sachs, made presentations regarding ExxonMobil's

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[94] A0905 n.115; A0239.

[95] A0889.

[96] *Id.*; A0266 (emphasis added).

[97] A0889.

[98] A0890; A0746-747 at ¶48.

September 18 merger proposal.[99] The Board rejected the proposal but authorized Sheffield to continue negotiations with Woods.[100]

At the September 22 meeting, the Board also received an update concerning negotiations with Party A.[101] Pioneer executive Dealy—who would rise to take Sheffield's place as CEO upon Sheffield's looming retirement and who also stood to benefit from a CIC transaction—notified the Board that negotiations with Party A had hit upon a "valuation difference."[102] Although Dealy told the Board that Pioneer would continue negotiating with Party A, the speed with which Pioneer would sprint towards announcing a deal with ExxonMobil in the days that followed suggests that Pioneer's management did not view a deal with Party A as a priority.[103] Indeed, less than a week after the meeting, on September 28, Pioneer entered into an exclusivity agreement requiring it to negotiate exclusively with ExxonMobil until October 15.[104]

On September 24, 2023, Sheffield and Woods met to discuss the potential transaction.[105] Sheffield explained that the Board had rejected ExxonMobil's

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[99] A0890; A0746-747 at ¶48.

[100] A0890; A0746-747 at ¶48.

[101] A0890.

[102] *Id.*; A0305.

[103] A0890; A0305.

[104] A0890; A0369.

[105] A0891; A0747 at ¶49.

proposal but that the Board had authorized Sheffield to continue discussing the potential transaction.[106] Woods and Sheffield then discussed several key deal terms inferably important to Sheffield personally, including a commitment that ExxonMobil would keep Pioneer's headquarters in Irving, Texas open for at least two years following the transaction closing date, and that two of Pioneer's directors, including Sheffield himself, would receive seats on ExxonMobil's board.[107]

At a Board meeting on September 26, 2023, Sheffield advised that he and Woods had spoken on the phone earlier that day.[108] Representatives of Goldman Sachs, including Suhail Sikhtian ("Sikhtian"), led the Board in a discussion regarding a potential transaction with ExxonMobil.[109] According to Goldman Sachs, two "core members" of its team working on the Merger were also "member[s] of the Goldman Sachs Investment Banking Team serving [ExxonMobil]. In such capacity, [the two core members] may have worked and may in the future work on undisclosed but related assignments."[110] One of those two "core members" of the team was Sikhtian, who was Managing Director and head of Goldman Sachs's global natural

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[106] A0891; A0747 at ¶49.

[107] A0891; A0747 at ¶49.

[108] A0891; A0747 at ¶51.

[109] A0891; A0747 at ¶51.

[110] A0891; A0748 at ¶53.

resources investment banking team.[111] Goldman Sachs's pledge, therefore, that the two team members would not work with ExxonMobil during the Merger negotiations was insufficient to eliminate the risk of conflict.[112]

On October 5, 2023, the *Wall Street Journal* reported that "Exxon Mobil [was] closing in on a deal to buy Pioneer Natural Resources, a blockbuster takeover that could be worth roughly $60 billion and reshape the U.S. oil industry."[113]

Two days later the Board held a meeting at which it discussed the Merger negotiations.[114] Sheffield told the Board that he had met with Woods on October 6 and that Woods was authorized to propose a deal in which Pioneer stockholders would own 11.75% of the combined company.[115] Sheffield explained that he had countered that Pioneer stockholders should own 12%.[116] There is no indication in the record that the Board had ever authorized Sheffield to make such a counterproposal.[117] In a tacit admission that he had lacked such authority, Sheffield

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[111] A0891-892.

[112] A0892.

[113] *Id.*; A0749 at ¶55.

[114] A0892.

[115] *Id.*; A0749 at ¶57.

[116] A0892; A0749 at ¶57.

[117] A0892.

then requested authority to propose ownership of just 11.875%.[118] The Proxy and the 220 record produced to Plaintiff to date do not state whether Sheffield had already backchanneled the 11.875% term to Woods by text message or email; it is certainly possible he had done so, given his pattern of conduct in privately proposing material price terms to Woods without Board approval.[119] The answer to this specific question exists solely within the Concealed Communications.

On October 8, Sheffield told the Board that he had had another discussion with Woods the previous day.[120] According to Sheffield, he had discussed with Woods what percent of the combined company the Pioneer stockholders should hold and, unsurprisingly, the two men settled on a deal at Pioneer's reserve price: Pioneer stockholders would own just 11.875% of the combined company.[121]

On October 10, Goldman Sachs issued a fairness opinion in favor of the Merger.[122] That evening, Pioneer and ExxonMobil executed the Merger Agreement.[123] It provided for an exchange ratio of 2.3234 shares of ExxonMobil stock for each share of Pioneer stock, representing a premium of approximately

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[118] *Id.*; A0749 at ¶57.

[119] A0892.

[120] A0893; A0750 at ¶59.

[121] A0893; A0750 at ¶59.

[122] A0893; A0750-751 at ¶60.

[123] A0893; A0750-751 at ¶60.

19.9% over the closing price of Pioneer stock on October 5, 2023, the last trading day before media reports emerged that Pioneer and ExxonMobil were in merger discussions.[124] The Merger was an all-stock deal valued at $59.5 billion based on ExxonMobil's October 5, 2023 closing price.[125]

Sheffield retired as Pioneer's CEO effective December 31, 2023; he transitioned to the non-executive role of special advisor to Pioneer's CEO, and Dealy took over as CEO.[126] Sheffield retained his CIC benefits despite his retirement as Pioneer's CEO.[127]

4. Stockholders Oppose Sheffield's Merger Windfall

On February 7, 2024, Pioneer stockholders overwhelmingly rejected Sheffield's pay package.[128] On a purportedly nonbinding advisory basis, 68.3% of votes were cast "Against" "the compensation that may be paid or become payable to Pioneer's named executive officers that is based on or otherwise related to the transactions contemplated by the Merger Agreement[.]"[129]

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[124] A0893; A0750-751 at ¶60.

[125] A0893; A0750-751 at ¶60.

[126] A0893-894; A0751 at ¶61.

[127] A0894; A0429.

[128] A0894; A0751 at ¶63.

[129] A0894; *see* A0751 at ¶63.

5. In Addition To The Merger-Specific Misconduct That Sheffield, Over Text Message, Admitted To Perpetrating, Sheffield Has Since Been Accused Of Perpetrating Wrongdoing Over Text Message In Another Context

On May 2, 2024, the Federal Trade Commission ("FTC") issued a consent order (the "Consent Order") that prohibited Sheffield from taking a seat on ExxonMobil's board of directors or serving in an advisory capacity to ExxonMobil's board of directors or management team.[130] According to the complaint[131] giving rise to the Consent Order (the "FTC Complaint"), Sheffield had "campaigned to organize anticompetitive coordinated output reductions between and among U.S. crude oil producers, and others, including the Organization of Petroleum Exporting Countries ("OPEC") . . ."[132] In particular, the Federal Trade Commission asserted that Sheffield's "sustained and long-running strategy to coordinate output reductions" *included his use of "text messages"* to "discuss[] crude oil market dynamics, pricing, and output."[133] According to the FTC, Sheffield said, among other things, that "[i]f Texas leads the way, maybe we can get OPEC to cut production. Maybe Saudi and Russia will follow. That was our plan[,]" and "I was using the tactics of OPEC+ to

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[130] A0894.

[131] A0552-559.

[132] A0894; A0552.

[133] A0894-895; A0553 (emphasis added).

get a bigger OPEC+ done."[134] OPEC is the Organization of Petroleum Exporting Countries, and OPEC+ is "a related cartel of other oil-producing countries[.]"[135]

On May 2, 2024, Semafor reported that the FTC "plan[ned] to recommend a potential[] criminal case against [Sheffield] . . . for comments he made to Texas rivals suggesting they coordinate ways to drill less oil, people familiar with the matter said."[136]

[134] A0895; A0557.

[135] A0895; A0552.

[136] A0895; A0541-551.

ARGUMENT

I. THE COURT OF CHANCERY ABUSED ITS DISCRETION BY AFFIRMING THE MAGISTRATE'S FINAL REPORT'S SCOPE DETERMINATION DESPITE SETTING AN IMPOSSIBLE TASK FOR PLAINTIFF TO ACCOMPLISH

A. QUESTION PRESENTED

Did the Court of Chancery abuse its discretion by affirming the Magistrate's Final Report's scope determination despite setting an impossible task for Plaintiff to accomplish: anticipate with specificity what key information Sheffield withheld from Pioneer's board without having access to the key information that Sheffield withheld from the Board?

This issue was preserved.[137]

B. SCOPE OF REVIEW

In Section 220 actions, this Court reviews the Court of Chancery's determination of the scope of relief for abuse of discretion.[138]

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[137] A0915-923; A0992-997.

[138] *Palantir*, 203 A.3d at 748 (*citing Wal–Mart Stores, Inc. v. Ind. Elec. Workers Pension Trust Fund IBEW*, 95 A.3d 1264, 1271–72 (Del. 2014)).

C. MERITS OF ARGUMENT

1. Legal Standards

(a) The Section 220 Standard

The Court of Chancery concluded correctly that Plaintiff "met the credible basis requirement[.]"[139] Once Plaintiff has established a proper purpose by presenting "some evidence to suggest a credible basis from which a court can infer that . . . wrongdoing may have occurred[,]" Plaintiff must prove "that each category of books and records is essential to accomplishment of the stockholder's articulated purpose for the inspection."[140] "[T]he court must give the petitioner everything that is 'essential,' but stop at what is 'sufficient.'"[141] Books and records are "essential" and "necessary" "if they address the 'crux of the shareholder's purpose' and if that information 'is unavailable from another source,'" or, in other words, "all of the documents in the corporation's possession, custody or control, that are necessary to satisfy that proper purpose."[142] "The source of the documents and the manner in which they were obtained by the corporation have little or no bearing on a

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[139] Ex. A at 5.

[140] *Palantir*, 203 A.3d at 751 (citation omitted).

[141] *Lebanon Cnty. Empls.' Ret. Fund v. AmerisourceBergen*, 2020 WL 132752, at *24 (Del. Ch. Jan. 13, 2020) (citation omitted).

[142] *Palantir*, 203 A.3d at 751-52.

stockholder's inspection rights."[143] "[A] petitioner meets her burden to prove necessity by identifying the categories of books and records she needs and presenting some evidence that those documents are indeed necessary."[144]

The starting point for an adequate inspection is the "board-level documents that formally evidence the directors' deliberations and decisions and comprise the materials that the directors formally received and considered," and "the decisions they reached" ("Formal Board Materials").[145] However, adequate inspection does not end there.[146] "If the plaintiff makes a proper showing, an inspection may extend to informal materials that evidence the directors' deliberations, the information that they received, and the decisions they reached ('Informal Board Materials')."[147] "Informal Board Materials generally will include communications between directors and the corporation's officers and senior employees, such as information distributed

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[143] *Saito v. McKesson HBOC, Inc.*, 806 A.2d 113, 118 (Del. 2002).

[144] *Palantir*, 203 A.3d at 755.

[145] *AmerisourceBergen*, 2020 WL 132752, at **24-25.

[146] As the Letter Opinion put it, "[b]ecause this action was filed before the General Assembly amended Section 220 to import a new legal regime, decades of carefully crafted judge-made law govern this scope analysis." Ex. A at 6. (*see* citation to Del. S.B. 21, 153d Gen. Assem. (2025), codified at 8 *Del. C.* § 220).

[147] *AmerisourceBergen*, 2020 WL 132752, at *25; *see Palantir*, 203 A.3d at 742, 753; *Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752, 793 (Del. Ch. 2016), *abrogated on other grounds by Tiger v. Boast Apparel, Inc.*, 214 A.3d 933 (Del. 2019).

to the directors outside of formal channels, in between formal meetings, or in connection with other types of board gatherings."[148] "Informal Board Materials also may include emails and other types of communication sent among the directors themselves, even if the directors used non-corporate accounts."[149] "In an appropriate case, an inspection may extend further to encompass communications and materials that were only shared among or reviewed by officers and employees ('Officer-Level Materials')."[150]

This Court's "precedent is clear that director emails are within the bounds of inspection if they are necessary and essential to accomplishing a proper purpose."[151] "'[B]ooks and records' [] has long been understood to cover both official corporate records and less formal written communications."[152] Delaware courts have increasingly determined that inspection of electronic communications is necessary and essential for stockholders to accomplish their proper purposes.[153] Indeed, as this Court explained in *Palantir*, "it cannot be otherwise if the statutory purpose of § 220

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[148] *AmerisourceBergen*, 2020 WL 132752, at *25.

[149] *Id.*

[150] *Id.*

[151] *Brown v. Empire Resorts, Inc.*, C.A. No. 2019-0908-KSJM (Del. Ch. Feb. 20, 2020) (TRANSCRIPT) at 46; *Palantir*, 203 A.3d at 750; *Bucks Cnty. Emps. Ret. Fund v. CBS Corp.*, 2019 WL 6311106, at *9 (Del. Ch. Nov. 25, 2019).

[152] *Palantir*, 203 A.3d at 750.

[153] *Id.* at 753.

is to have meaning in a fast-moving society where the forms in which corporate records are kept continually evolve."[154] The Delaware Legislature specifically amended Section 220 "to recognize that corporate books and records are stored in electronic form."[155]

Production of electronic communications is especially appropriate when traditional corporate records, such as Board meeting minutes, are unclear or omit information essential to the plaintiff's purpose.[156] The law makes clear that the court's inquiry should focus on a case's specific facts and their relationship to the particular purpose set forth by the Plaintiff.[157] It cannot be the case that Plaintiff

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[154] *Id.*

[155] *Amalgamated Bank*, 132 A.3d at 792-93.

[156] *Id.*; *Empire*, Tr. at 58. In *Palantir*, the Court instructed that "if non-email books and records are insufficient, then the court should order emails to be produced." *Palantir*, 203 A.3d at 753. In *Empire Resorts*, the Court of Chancery ordered defendant to produce emails where "there is nothing in the relevant board or special committee minutes to explain who decided which set of projections Moelis should rely upon." Tr. at 42.

[157] *AmerisourceBergen Corp.*, 2020 WL 132752, at *25 ("Whether a stockholder is entitled to a particular category of documents 'is fact specific and will necessarily depend on the context in which the shareholder's inspection demand arises."'); *Hightower v. SharpSpring, Inc.*, 2022 WL 3970155, at *10 (Del. Ch. Aug. 31, 2022) (plaintiff was entitled to informal board materials and officer-level materials because "[i]t seems likely these documents are located in the files, including potentially emails of the management members responsible for preparing the updated projections along with the board members, if any, who instructed management to do so."); *CBS Corp.*, 2019 WL 6311106, at *9 (court ordered production of electronic communications exchanged between and among directors and corporate counsel for a period of two weeks before and after a meeting of the board's nominations and

must "do the impossible: demonstrate that the corporation in fact acted only through electronic communications, even though the purpose of a books and records action is to get the very documentary record that would allow a stockholder to make that determination."[158]

(b) The Abuse Of Discretion Standard

A court abuses its discretion when its judgment "was based upon capriciousness or arbitrariness[.]"[159] This discretion is "inherently case-by-case and fact specific."[160] Failure to consider the relevant facts when exercising discretion constitutes an abuse of discretion.[161]

When a Section 220 petitioner "reasonably identifies the documents it needs and provides a basis for the court to infer that those documents likely exist in the form of electronic mail, the respondent corporation cannot insist on a production order that excludes emails even if they are in fact the only responsive corporate

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governance committee because the court's review of formal meeting minutes and public disclosures showed a credible basis for suspecting that wrongdoing may have occurred at that meeting).

[158] *Palantir*, 203 A.3d at 756.

[159] *Wal-Mart Stores*, 95 A.3d at 1272 n.13 (*citing Chavin v. Cope*, 243 A.2d 694 (Del. 1968)).

[160] *Palantir*, 203 A.3d at 748 (internal citations and quotations omitted).

[161] *See Roache v. Charney*, 38 A.3d 281, 288 (Del. 2012)

documents that exist and are therefore by definition necessary."[162] This Court has previously held that "the Court of Chancery abused its discretion by denying wholesale [a Section 220 petitioner's] request to inspect emails" relating to the petitioner's proper purpose.[163]

2. The Court Below Abused Its Discretion

The court below abused its discretion by requiring Plaintiff "to do the impossible[:]"[164] articulate with specificity what key information Sheffield withheld from the Board without having access to the key information. In so doing, the court below inappropriately denied Plaintiff's request to inspect substantive emails and text messages that, as Pioneer admitted, Sheffield never provided to the Board, and which definitionally are not within the Company's Formal Board Materials.

(a) Sheffield Hid Substantive Information From The Board

Pioneer, in the person of its charismatic founder-director-CEO Sheffield, necessarily did not maintain the substantive information that Sheffield withheld from the Board within its Formal Board Materials. The substantive information that Sheffield withheld from the Board at issue here—the Concealed Communications—

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[162] *Palantir*, 203 A.3d at 756.

[163] *Id.* at 742.

[164] *See id.* at 756.

existed solely within Sheffield's text messages and emails that Pioneer admitted Sheffield never provided to the Board.

Sheffield did not provide the balance of his substantive text message communications with Woods and all of his substantive email communications with Woods—the Concealed Communications—to the Board.[165] Specifically, counsel for Pioneer said:

> Plaintiff's argument boils down to the following, I think: Plaintiff knows that **Mr. Sheffield communicated by email and text with Mr. Woods**. Well, they know that for two reasons: one, text messages are in the board materials we produced; and, two, I told them. And it knows that **not all of those emails and text messages were provided to the board**, again, because I told them. And **[Plaintiff's counsel] said, well, you know, defense counsel hasn't taken a position that those communications are not substantive. Well, they are**. That's not the question. The question is whether the substance was withheld from the board and whether plaintiffs have pointed to any evidence that entitles them to access those communications because it was withheld from the board.[166]

Put plainly, Pioneer admitted that the Concealed Communications are substantive.[167] At no point in the proceedings, including at the Section 220 trial, has Pioneer taken the position that those substantive Concealed Communications are anything other than about the topics Plaintiff has identified.[168] Pioneer has not raised

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[165] A0818-819 at 57:23-58:14.

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

[167] A0888; A0818-819 at 57:23-58:14.

[168] A0888.

burden as a defense to production. Further, despite a robust investigative dialogue, three defense briefs, a Section 220 trial, exceptions to that Section 220 trial, and an explicit invitation from Plaintiff to do so, Pioneer has never represented that the substance of the Concealed Communications was communicated to the Board before the Board voted to approve the Merger.[169]

Plaintiff has identified "some evidence"[170] that the Concealed Communications are necessary to satisfy Plaintiff's proper purpose of investigating a fraud upon the Board.[171] Sheffield did not behave like an arms-length negotiator. He undercut Pioneer's negotiating position repeatedly.[172] He withheld the

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[169] A0910; A0960-961; A0982-983.

[170] *Palantir*, 203 A.3d at 754.

[171] A0568-569 (referencing purposes of "determining if the Board was fully informed of all the material aspects surrounding the [Merger]" and "whether any of the Officers perpetrated a fraud on the Board to render the Board's decision on the Merger any less than fully informed").

[172] A0991 n.58; A0745 at ¶43 (Sheffield tipped his hand, communicating "that he personally would support a transaction reflecting a premium of at least 20% above the 'at the market' exchange ratio of 2.14 shares"); A0904-905, A0265-266 (Sheffield, in text message communications with Woods, admitted that he had made an offer at the bottom of a Pioneer financial advisor's suggested range with the expectation of getting a deal done below that range, thus anchoring negotiations even lower); A0749 at ¶57 (without prior Board authorization, Sheffield offered to Woods that Pioneer stockholders would own 12% of the combined company, in response to Woods's proposal of 11.75%).

Concealed Communications from the Board.[173] The highly unusual content of the unsupervised text messages that Sheffield did provide to the Board—i.e., he text-messaged his counterparty's CEO that he had tried to reach a deal *substantially below* the 20% bare minimum premium suggested by a Pioneer financial advisor and then quoted a new, lower 16% premium, anchoring negotiations *even lower*[174]—give rise to a specific, reasonable inference that the Concealed Communications contain additional instances of Sheffield further undercutting Pioneer's negotiating position in private.

3. Plaintiff Demonstrated A Need For A Broader Inspection

The court below correctly determined that Plaintiff established a credible basis to suspect wrongdoing. But the court (wrongly) concluded that Plaintiff had not specified what the "key information" that Sheffield withheld from the Board "might be."[175] There are two problems with this conclusion: first, Plaintiff identified that the information is reflected in the content of the Concealed Communications, and second, as discussed below, no outside stockholder could possibly specify exactly what information those Concealed Communications contained. But Plaintiff

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[173] A0818-819 at 57:23-58:14; A0810 at 49:16-22 (Pioneer conceding that Sheffield specifically provided some of his text messages with Woods to the Board).

[174] A0904; A0265-266.

[175] Ex. A at 8.

described with specificity repeated occasions during the deal process when Sheffield discussed material price terms with Woods without Board approval, looping the Board in only after he had inappropriately anchored negotiations and undercut Pioneer's negotiating position. As discussed above, in his text messages with Woods, Sheffield specifically admitted that that he had made a lowball offer with the expectation of getting a deal done below a Pioneer financial advisor's suggested premium range, thus anchoring negotiations even lower.[176] Given Pioneer's admission at trial that Sheffield provided only some of his substantive text messages with Woods to the Board, a fair inference is that the Concealed Communications are the sole repository of further evidence of Sheffield undercutting Pioneer's negotiating position. This more than satisfies the standard that Plaintiff need only present "some evidence"[177] that the Concealed Communications are necessary to satisfy Plaintiff's proper purpose of investigating a fraud upon the Board.

4. The Impossible Task

It is an abuse of discretion to require Plaintiff to specify what is in the Concealed Communications before ordering their production. After all, the Concealed Communications were concealed. This tension is no secret: as the court acknowledged during the underlying Section 220 trial, "[o]f course the stockholder

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[176] A0904-905.

[177] *Palantir*, 203 A.3d at 738.

doesn't know what they don't know. I expect the response we're going to get from plaintiff when they stand up again for rebuttal is I can't prove a negative. I mean, they don't have this information at their fingertips."[178] Yet that is exactly the circular task that the court below would have Plaintiff undertake:

> Here, Plaintiff has failed to identify the foothold needed to inspect beyond the Formal Board Materials. Plaintiff contends that Sheffield "withheld key information from the Board," **but Plaintiff does not specify what that key information might be**. Plaintiff suggests that Sheffield had developed a "pattern" of discussing material price terms with Woods without the Board's permission, pointing to the Consent Order as a reason to be suspicious of his use of text messages. But a fiduciary's allegedly ill-advised texts sent in one context does not entitle a stockholder to inspect that fiduciary's text[s] for all purposes.[179]

This interpretation of the legal standard is impossible to satisfy and turns Section 220 on its head. If Plaintiff were able to specify precisely the content of the Concealed Communications, Plaintiff would have no reason to seek their production. The better test is laid out in this Court's precedent, which controls this proceeding, and which the court below cited:

> . . . [A] stockholder can inspect Informal Board Materials and Officer-Level Materials if the stockholder "demonstrate[s] a need for broader inspection." A stockholder can demonstrate a need by, for example, showing a discrepancy between public disclosures and Board materials

[178] A0822-823 at 61:23-62:3.

[179] Ex. A at 8 (emphasis added).

> or by showing that the Formal Board Materials do not provide details as to key events.[180]

The record shows that Plaintiff demonstrated a need for broader inspection by showing both a discrepancy between public disclosures and Board materials and by showing that the Formal Board Materials do not provide details as to key events. First, the Proxy does not disclose the material fact that Sheffield disclosed only some, but not all, of his substantive text message communications with Woods to the Board.[181] In fact, the record shows that Sheffield withheld the Concealed Communications from the Board.[182] Second, the record shows that Sheffield, while significantly conflicted, undercut Pioneer's negotiating position repeatedly.[183] The

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[180] Ex. A at 7-8.

[181] *See* A0366-382 (failing to disclose the material fact that Sheffield disclosed only some, but not all, of his substantive text message communications with Woods to the Board).

[182] A0784 at 23:9-23:15 (Plaintiff noting that Pioneer hadn't taken the position that the text messages in this case are not substantive); A0810 at 49:16-22 (Pioneer conceding that Sheffield specifically took action to provide some of his text messages to the Board); A0818-819 at 57:23-58:14 (Pioneer conceding that the Concealed Communications were not provided to the Board and that the Concealed Communications are substantive); A0826 at 65:14-65:17 (Plaintiff noting that Pioneer had just admitted that Sheffield and Woods engaged in substantive communications about the merger by text); A0888 (noting that Pioneer had admitted at trial that the text and email communications between Sheffield and Woods that were never provided to the Board were substantive); A0982 n.14 (noting Pioneer's counsel's failure to make a representation that Sheffield had communicated the information contained in the Concealed Communications to the Board).

[183] A0991 n.58; A0745 at ¶43 (Sheffield tipped his hand, communicating "that he personally would support a transaction reflecting a premium of at least 20% above

record further shows that, in an unsupervised text message conversation with the CEO of Pioneer's counterparty, Sheffield admitted that he had already undercut Pioneer's negotiating position, and then undercut it further.[184] Plaintiff has made the "proper showing"[185] required for production of Informal Board Materials (and also for Officer-Level Materials, if this Court considers the Concealed Communications to be Officer-Level Materials). To require Plaintiff to describe the contents of the Concealed Communications with greater specificity would require Plaintiff to review the Concealed Communications. Plaintiff cannot do that, as the Concealed Communications have been concealed from both the Board and from Plaintiff.

This situation is similar to the situation this Court faced in *Palantir* (albeit on a smaller scale). In *Palantir*, plaintiff stockholder sought to inspect defendant corporation's emails relating to certain amendments to an investors' rights

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the 'at the market' exchange ratio of 2.14 shares"); A0265-266 (Sheffield, in text message communications with Woods, admitted that he had made an offer at the bottom of a Pioneer financial advisor's suggested range with the expectation of getting a deal done below that range, thus anchoring negotiations even lower); A0749 at ¶57 (without prior Board authorization, Sheffield offered to Woods that Pioneer stockholders would own 12% of the combined company, in response to Woods's proposal of 11.75%).

[184] A0265-266 (Sheffield, in text message communications with Woods, admitted that he had made an offer at the bottom of a Pioneer financial advisor's suggested range with the expectation of getting a deal done below that range, thus anchoring negotiations even lower).

[185] *AmerisourceBergen*, 2020 WL 132752, at *25.

agreement.[186] The *Palantir* plaintiff "discharged its evidentiary burden by presenting evidence that [defendant] did not honor traditional corporate formalities (as suggested by its 'serial failures to hold annual stockholder meetings') and had acted through email in connection with the same alleged wrongdoing that [plaintiff] was seeking to investigate."[187] The *Palantir* defendant conceded that formal books and records such as board resolutions or minutes did not exist.[188]

Here, Defendant produced board minutes and board presentations. However, with respect to one specific topic central to Plaintiff's proper purpose (the investigation of a fraud upon the Board),[189] Pioneer has conceded that formal books and records do not exist: Sheffield failed to provide the Concealed Communications from the Board,[190] definitionally keeping them far away from Pioneer's Formal Board Materials. As discussed above, the Formal Board Materials that Pioneer did produce contain "some evidence"[191] that the Concealed Communications are the

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[186] *Palantir*, 203 A.3d at 742.

[187] *Id.*

[188] *Id.*

[189] A0568-569.

[190] A0810 at 49:16-49:22 (Pioneer conceding that Sheffield had provided the text messages that the Board did receive); A0818-819 at 57:23-58:14 (Pioneer conceding that Sheffield did not provide all of his substantive text messages and emails with Woods to the Board).

[191] *Palantir*, 203 A.3d at 755.

only repository of information that will satisfy Plaintiff's proper purpose. Pioneer must produce the Concealed Communications.

In holding otherwise, the Court of Chancery abused its discretion.

II. THE COURT OF CHANCERY ABUSED ITS DISCRETION BY RESTING ITS CONCLUSION UPON AN INACCURATE FACTUAL PREMISE

A. QUESTION PRESENTED

Did the Court of Chancery abuse its discretion by resting its conclusion upon an inaccurate factual premise when Plaintiff specifically identified text messages that show Sheffield engaged in wrongdoing directly related to the misconduct that Plaintiff's Demand sought to investigate?

This issue was preserved.[192]

B. SCOPE OF REVIEW

As discussed above, in Section 220 actions, this Court reviews the Court of Chancery's determination of the scope of relief for abuse of discretion.[193]

C. MERITS OF ARGUMENT

1. The Court of Chancery Abused Its Discretion By Appearing To Conclude That Sheffield Did Not Send "Ill-Advised Texts" In The Context Of The Purpose For Which Plaintiff Seeks Inspection

The Court of Chancery's ruling rests on a flawed factual premise. The court appears to have mistakenly concluded that Plaintiff's suspicion regarding Sheffield's

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[192] A0915-923; A0992-997.

[193] *Palantir*, 203 A.3d at 748 (*citing Wal–Mart Stores*, 95 A.3d at 1271–72 (Del. 2014).

text messages was based solely on the Consent Order[194] and reasoned that "allegedly ill-advised text[s] sent in one context" could not justify inspection "for all purposes."[195] That finding both misstates the record and ignores the Merger-specific evidence Plaintiff actually presented.

First, Plaintiff did not rely exclusively on the Consent Order to argue that the Concealed Communications contain additional evidence of wrongdoing. Plaintiff identified text messages in which Sheffield boasted to Exxon CEO Darren Woods that he had opened negotiations at the bottom of Pioneer's range without having sought or obtained Board approval.[196] Sheffield further used an unsupervised text message conversation with Woods to admit that he had made a lowball offer with the expectation of getting a deal done below a Pioneer financial advisor's suggested premium range.[197] Sheffield used text messages to anchor negotiations even lower, texting Woods that he had contemplated reaching a deal substantially below the bare minimum premium suggested by a Pioneer financial advisor.[198] This further shows that Sheffield himself had contemplated potentially reaching a deal that was

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[194] Ex. A at 8.

[195] *Id.*

[196] A0888-889.

[197] A0887-888; A0904-905.

[198] A0889.

substantially below the bare minimum premium suggested by a Pioneer financial advisor. In sum, Plaintiff identified specific text messages in which Sheffield: (1) admitted that he had made a lowball offer, and (2) told Pioneer's counterparty that he had expected to get a deal done below the range proposed by a Pioneer financial advisor. The court below concluded that Plaintiff met the credible basis requirement.[199] Plaintiff's proper purpose is squarely tied to those texts; their existence strongly suggests that the Concealed Communications contain evidence of additional wrongdoing and that their production is necessary to satisfy Plaintiff's proper purpose.

Second, the Consent Order and the corresponding FTC Complaint were not Plaintiff's sole basis for suspicion but rather corroborating evidence. The FTC highlighted that Sheffield's long running strategy to coordinate output reductions was primarily conducted by "text messages" to "discuss[] crude oil market dynamics, pricing, and output."[200] The FTC Complaint suggests that Sheffield habitually used informal channels—such as text messages—to conduct substantive corporate business. The FTC Complaint further underscores why inspection of

[199] Ex. A at 5.

[200] *Id.* at 4.

Sheffield's texts with respect to the Merger is necessary: it is an additional indication that Sheffield engages in wrongdoing by text message specifically.

Third, the lower court's characterization that there is only a "mere possibility that some additional details might exist in informal communications" is contradicted by the record.[201] As discussed above, there is "some evidence"[202] that additional, *substantive* details regarding Sheffield's wrongdoing exist solely in the Concealed Communications. When evaluated alongside the troubling text messages that Sheffield did provide to the Board and that Pioneer did produce, Plaintiff is left with a critical unanswered question: if this was how Sheffield conducted himself in the text messages he disclosed to the Board, how did he conduct himself in the text messages and emails that he withheld from the Board? Plaintiff has identified specific evidence supporting an inference that Sheffield engaged in Merger-specific misconduct by text message, and that the only book or record where evidence of that misconduct would be found is the Concealed Communications.[203]

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[201] *Id.* at 8.

[202] *Palantir*, 203 A.3d at 755.

[203] Under *Palantir*, to obtain electronic documents, Plaintiff must "provide[ ] a basis for the court to infer that those [additionally demanded] documents likely exist in the form of electronic mail. *Palantir*, 203 A.3d at 756; *see also id.* ("KT4 also submitted evidence that Palantir had conducted other corporate business informally, including over email in connection with the September 2016 Amendments.").

In sum, Plaintiff did not argue that the Consent Order alone justified inspection of Sheffield's texts in this case. Rather, Plaintiff identified *Merger-specific texts* that directly implicated Sheffield's fiduciary duties with respect to the Merger. In apparently concluding otherwise, the Court of Chancery rested its decision on an erroneous factual premise and thereby abused its discretion.

CONCLUSION

For the reasons set forth herein, the Court should reverse the Letter Opinion's scope determination and remand the action for further proceedings.

Dated: October 14, 2025

GRANT & EISENHOFER P.A.

/s/ Rebecca A. Musarra
Michael J. Barry (#4368)
Christine M. Mackintosh (#5085)
Rebecca A. Musarra (#6062)
William G. Passannante II (#7093)
Demetrius M. Davis (#7188)
123 S. Justison Street, 7th Floor
Wilmington, DE 19801
Tel: (302) 622-7000
mbarry@gelaw.com
cmackintosh@gelaw.com
rmusarra@gelaw.com
wpassannante@gelaw.com
ddavis@gelaw.com

Counsel for Appellant Operating Engineers Construction Industry and Miscellaneous Pension Fund

Words: 8,539/10,000

EXHIBIT A

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

KATHALEEN ST. JUDE MCCORMICK
CHANCELLOR

LEONARD L. WILLIAMS JUSTICE CENTER
500 N. KING STREET, SUITE 11400
WILMINGTON, DELAWARE 19801-3734

July 28, 2025

Michael J. Barry
Christine M. Mackintosh
Rebecca A. Musarra
William G. Passannante II
Demetrius M. Davis
GRANT & EISENHOFER P.A.
123 S. Justison Street, 7th Floor
Wilmington, DE 19801

David J. Teklits
MORRIS, NICHOLS, ARSHT
& TUNNELL LLP
1201 N. Market Street
Wilmington, DE 19899

Re: *Operating Engineers Construction Industry and Miscellaneous Pension Fund v. Pioneer Natural Resources Company,* C.A. No. 2024-0101-SEM

Dear Counsel:

This letter opinion resolves Plaintiff's exceptions to Senior Magistrate Molina's Final Report dated January 16, 2025 (the "Final Report").[1]

I. BACKGROUND

I have reviewed this matter *de novo*, as I must,[2] but I adopt Senior Magistrate Molina's clear and thorough statement of the factual background.[3] The abbreviated version of the facts is that Scott Sheffield founded Defendant Pioneer Natural Resources in the late 1990s and was its CEO through 2023.[4] Pioneer was a Delaware

[1] C.A. No. 2024-0101-SEM, Docket ("Dkt.") 51 ("Final Report"). This decision cites to: docket items by Dkt. number; the Joint Pre-Trial Stipulation and Order ("PTO"), Dkt. 40; and trial exhibits by JX number.

[2] *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999).

[3] *See* Final Report at 4:11–16:8.

[4] PTO ¶¶ 18, 61.

corporation that explored for, developed, and produced oil, natural gas liquids, and gas in West Texas.[5] On October 10, 2023, ExxonMobil and Pioneer executed a merger agreement, under which ExxonMobil agreed to acquire Pioneer in an all-stock transaction valued at approximately $59.5 billion.[6] Pioneer filed its proxy statement with the SEC on January 8, 2024,[7] and Pioneer's stockholders approved the merger on February 7, 2024.[8] ExxonMobil announced that it had completed the acquisition on May 3, 2024.[9]

Before the acquisition, Plaintiff Operating Engineers Construction Industry and Miscellaneous Pension Fund beneficially owned Pioneer stock.[10] In response to the announcement of the transaction, Plaintiff served a demand to inspect Pioneer's books and records pursuant to Section 220 of the Delaware General Corporation Law.[11] The demand sought to investigate potential breaches of fiduciary duty by Pioneer's senior management and directors in connection with the merger.[12]

Plaintiff's theory of possible wrongdoing is that Sheffield misled the Pioneer Board of Directors in connection with its consideration of the merger. Pioneer had

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[5] *Id.* ¶ 17.

[6] *Id.* ¶ 60.

[7] *Id.* ¶ 43.

[8] JX-41 at 2.

[9] PTO ¶ 65.

[10] Dkt. 1 ("Compl."), Ex. 1 at Ex. 2.

[11] PTO ¶ 4.

[12] *See* Compl., Ex. 1.

announced Sheffield's retirement on April 26, 2023.[13] By August 2023, the Board was considering two possible transactions: Pioneer's acquisition of Party A; and ExxonMobil's acquisition of Pioneer.[14] Of those two possibilities, only the deal with ExxonMobil would trigger Sheffield's change-in-control benefits.[15] Plaintiff alleges that Sheffield was improperly incentivized to pursue the acquisition by ExxonMobil over the acquisition of Company A for that reason.[16]

In response to the Section 220 demand, Pioneer produced many hundreds of pages of documents including Board minutes, materials presented to the Board by Pioneer's management and advisors, memoranda sent to the Board by Pioneer management, engagement letters and relationship disclosures from the Board's financial advisors, and D&O questionnaire responses.[17]

Plaintiff filed this action in advance of the stockholder vote to preserve standing.[18] After Pioneer's initial production, Plaintiff continued to seek emails and text messages between Sheffield and ExxonMobil's CEO and Executive Chair, Darren

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[13] PTO ¶ 35.

[14] *Id.* ¶ 42.

[15] *Id.* ¶ 32.

[16] Compl. ¶ 11.

[17] *See, e.g.*, JX-7 (April 21, 2023 board minutes); JX-8 (May 15, 2023 board memorandum); JX-27 (Petrie Partners, LLC engagement letter dated October 5, 2023); JX-40 (Sheffield's D&O questionnaire); *see also* Dkt. 16 (September 3, 2024 Status Report stating Pioneer produced books and records on March 12, 2024, March 20, 2024, March 29, 2024, and May 16, 2024).

[18] PTO ¶ 7.

Woods, from January 1, 2023, through February 7, 2023, regarding the topics identified in the Pre-Trial Order.[19]

At trial, in addition to pointing out Sheffield's possible conflicts and leading role in the merger negotiations, Plaintiff relied on a May 2, 2024 FTC Consent Order to bolster its bid for emails and texts. According to the FTC complaint, Sheffield had "campaigned to organize anticompetitive coordinated output reductions between and among U.S. crude oil producers, and others, including the Organization of Petroleum Exporting Countries ('OPEC')."[20] The FTC asserted that Sheffield's "sustained and long-running strategy to coordinate output reductions" included his use of "text messages" to "discuss[] crude oil market dynamics, pricing, and output."[21]

In her Final Report, Senior Magistrate Molina ruled in favor of Pioneer. She concluded that Plaintiff had failed to adequately allege a credible basis for possible wrongdoing.[22] She further concluded that Plaintiff had failed to demonstrate that requested emails and text messages were necessary and essential, even if Plaintiff had carried its burden to demonstrate a proper purpose.[23]

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[19] *Id.* ¶ 67(a).

[20] JX-45 at 1.

[21] *Id.* at 2.

[22] Final Report at 16:9–16.

[23] *Id.* at 21:2–9.

Plaintiff filed exceptions to the Final Report, which the parties fully briefed.[24] I heard oral argument on May 20, 2025.[25]

II. ANALYSIS

On exceptions, Plaintiff argues that the Senior Magistrate erred by concluding that Plaintiff failed to meet the credible basis requirement. Plaintiff also argues that the Senior Magistrate erred in setting the scope of inspection.

Plaintiff has met the credible basis requirement, in my view. A plaintiff must demonstrate a credible basis to investigate possible wrongdoing, but the Delaware Supreme Court described that standard as the "lowest possible burden of proof."[26] To meet it, a stockholder need not prove that the wrongdoing "actually occurred"[27] nor show that wrongdoing is even "probable."[28] Any such requirement "would completely undermine the purpose of Section 220 proceedings, which is to provide shareholders the access needed to make that determination in the first instance."[29] To state a

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[24] Dkt. 48 (Pl.'s Notice of Exceptions); Dkt. 53 (Pl.'s Opening Br.); Dkt. 58 (Def.'s Answering Br.); Dkt. 60 (Pl.'s Reply Br.).

[25] Dkt. 64.

[26] *Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 123 (Del. 2006).

[27] *Marmon v. Arbinet-Thexchange, Inc.*, 2004 WL 936512, at *4 (Del. Ch. Apr. 28, 2004); *accord Thomas & Betts Corp. v. Leviton Mfg. Co., Inc.*, 681 A.2d 1026, 1031 (Del. 1996) ("While stockholders have the burden of coming forward with specific and credible allegations sufficient to warrant a suspicion of waste and mismanagement, they are not required to prove by a preponderance of the evidence that waste and mismanagement are actually occurring.").

[28] *Lebanon Cnty. Emps.' Ret. Fund v. AmerisourceBergen Corp.,* 2020 WL 132752, at *8 (Del. Ch. Jan. 13, 2020), *aff'd* 243 A.3d 417 (Del. 2020).

[29] *La. Mun. Police Emps.' Ret. Sys. v. Countrywide Fin. Corp.*, 2007 WL 2896540, at *12 (Del. Ch. Oct. 2, 2007), *order clarified*, 2007 WL 4373116 (Del. Ch. Dec. 6, 2007).

credible basis, a stockholder need only establish by a preponderance of the evidence that there is a credible basis to suspect a possibility of wrongdoing.[30] Given the details in the demand and facts presented at trial, Plaintiff exceeded this low bar. And the Senior Magistrate acknowledged whether Plaintiff had stated a credible basis presented a "close call."[31]

Although Plaintiff has met the credible basis requirement, it is not entitled to additional documents, because I reach the same conclusion as the Senior Magistrate as to scope.

Because this action was filed before the General Assembly amended Section 220 to import a new legal regime,[32] decades of carefully crafted judge-made law govern this scope analysis.

Under the prior regime, "[w]hen tailoring the production order, the court must balance the interests of the stockholder and the corporation."[33] Delaware courts struck this balance by limiting a stockholder-plaintiff's inspection to those records "essential and sufficient" to his stated purpose and by placing the burden of proof on

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[30] *See AmerisourceBergen*, 2020 WL 132752, at *6; *see also Seinfeld*, 909 A.2d at 118 (holding that a Section 220 plaintiff need only allege a "'credible basis' from which a court can infer that mismanagement, waste or wrongdoing *may* have occurred" (emphasis added)).

[31] Final Report at 19:12–13.

[32] *See* Del. S.B. 21, 153d Gen. Assem. (2025), codified at 8 *Del. C.* § 220.

[33] *AmerisourceBergen*, 2020 WL 132752, at *24 (citing *Sec. First Corp. v. U.S. Die Casting & Dev. Co.*, 687 A.2d 563, 569 (Del. 1997)).

the stockholder.[34] The essential-and-sufficient standard requires that, "where a § 220 claim is based on alleged corporate wrongdoing, and assuming the allegation is meritorious, the stockholder should be given enough information to effectively address the problem, either through derivative litigation or through direct contact with the corporation's directors and/or stockholders."[35]

In the taxonomy of books and records, there are "Formal Board Materials," "Informal Board Materials," and "Officer-Level Materials."[36] The scope of stockholder inspection is typically limited to Formal Board Materials. As the Delaware Supreme Court has explained, where "a company observes traditional formalities, such as documenting its actions through board minutes, resolutions, and official letters, it will likely be able to satisfy a Section 220 petitioner's needs solely by producing those books and records."[37]

But a stockholder can inspect Informal Board Materials and Officer-Level Materials if the stockholder "demonstrate[s] a need for broader inspection."[38] A

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[34] *KT4 P'rs LLC v. Palantir Techs. Inc.*, 203 A.3d 738, 751–52 (Del. 2019) (quoting *Leviton Mfg. Co.*, 681 A.2d at 1035).

[35] *Saito v. McKesson HBOC, Inc.*, 806 A.2d 113, 115 (Del. 2002).

[36] *AmerisourceBergen*, 2020 WL 132752, at *24–25.

[37] *Hightower v. SharpSpring, Inc.*, 2022 WL 3970155, at *9 (Del. Ch. Aug. 31, 2022); *see also Palantir Techs.,* 203 A.3d at 752–53 ("[T]he principle [is] that the Court of Chancery should not order emails to be produced when other materials (*e.g.*, traditional board-level materials, such as minutes) would accomplish the petitioner's proper purpose."); *AmerisourceBergen*, 2020 WL 132752, at *24 ("The starting point (and often the ending point) for an adequate inspection will be . . . Formal Board Materials.") (cleaned up).

[38] *Hightower*, 2022 WL 3970155, at *9.

stockholder can demonstrate a need by, for example, showing a discrepancy between public disclosures and Board materials or by showing that the Formal Board Materials do not provide details as to key events.[39]

Here, Plaintiff has failed to identify the foothold needed to inspect beyond the Formal Board Materials. Plaintiff contends that Sheffield "withheld key information from the Board," but Plaintiff does not specify what that key information might be.[40] Plaintiff suggests that Sheffield had developed a "pattern" of discussing material price terms with Woods without the Board's permission, pointing to the Consent Order as a reason to be suspicious of his use of text messages.[41] But a fiduciary's allegedly ill-advised texts sent in one context does not entitle a stockholder to inspect that fiduciary's text for all purposes.

As the Senior Magistrate observed, the produced Board materials are extensive.[42] The mere possibility that some additional details might exist in informal communications does not render those documents "necessary and essential" to

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[39] *See, e.g., Palantir Techs.,* 203 A.3d at 742 (finding non-emails insufficient where the defendant "did not honor traditional corporate formalities . . . and had acted through email in connection with the same alleged wrongdoing that [the plaintiff] was seeking to investigate").

[40] Compl. ¶ 33.

[41] Pl.'s Opening Br. at 15, 29, 35, 44.

[42] *See* Final Report at 19:21–20:2, 24:12–16; *see also* JX-5–JX-7, JX-9–JX-12, JX-16–JX-17, JX-20–JX-21, JX-26, JX-32–JX-34 (various confidential board materials, financial models, and investor presentations providing the detailed financial and strategic information considered by the Board).

understanding the Board's decision-making.[43] Plaintiff argues that its demand for electronic communications was "narrowly circumscribed,"[44] and that is a fair description of Plaintiff's request. But Plaintiff has not demonstrated that even this targeted scope is necessary under the circumstances.

III. CONCLUSION

I overrule Plaintiff's exceptions and adopt the Magistrate's Final Report.

Sincerely,

/s/ Kathaleen St. Jude McCormick

Chancellor

cc: All counsel of record (by *File & ServeXpress*)

[43] *See, e.g.*, *Hightower*, 2022 WL 3970155, at *9 ("The principle is that the Court of Chancery should not order emails to be produced when other materials (*e.g.*, traditional board-level materials, such as minutes) would accomplish the petitioner's proper purpose." (quoting *Palantir Techs.,* 203 A.3d at 752–53)).

[44] Pl.'s Opening Br. at 45.