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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

CORRECTED APPELLEE'S ANSWERING BRIEF

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NATURE OF PROCEEDINGS

This appeal arises from protracted books-and-records litigation of the type that the General Assembly had in mind when it recently amended Section 220 of the Delaware General Corporation Law. For almost two years, Plaintiff-appellant has been on the hunt for a smoking-gun document that might support a challenge to Exxon Mobil Corporation's ("ExxonMobil") $60 billion stock-for-stock acquisition of appellee Pioneer Natural Resources Company ("Pioneer") at a 20% premium (the "Merger"). The Merger resulted from several months of fully disclosed, arm's-length negotiations between ExxonMobil and Pioneer, and which was approved by a supermajority of independent, disinterested, and fully informed directors on Pioneer's board (the "Board"). Nearly 99% of voting stockholders approved the Merger. It is thus no surprise that Plaintiff has been unable to find a claim.

Plaintiff's dogged pursuit of a claim in support of its theory began with a demand to inspect thirty categories and subcategories of information about the Merger (the "Demand"). Plaintiff theorized that Pioneer's former CEO, Scott Sheffield, steered the Board toward ExxonMobil for the purpose of triggering a change-of-control payment tied to the Merger's approval. To support that narrative, the Demand speculated that Mr. Sheffield withheld material information from the Board about his meetings with ExxonMobil's CEO, Darren Woods. In the Demand's words, Mr. Sheffield "push[ed]" an "inadequately informed [B]oard [to]

pursue a deal with ExxonMobil at breakneck speed" to get Mr. Sheffield "everything [he] wanted." A0562-64.

Those allegations fell apart during the summary proceeding. Pioneer produced hundreds of pages of formal board materials that documented Mr. Sheffield's communications with ExxonMobil and other bidders in painstaking detail. But Plaintiff still wanted more. Facing an absence of formal books-and-records support for a viable claim, Plaintiff began demanding informal, electronic communications exchanged between Mr. Sheffield and Mr. Woods about the Merger. Plaintiff's theory is as follows: Mr. Sheffield exchanged text messages with Mr. Woods about the Merger; Mr. Sheffield did not share every single one of those messages with the Board; therefore, Mr. Sheffield's unproduced text messages must show that he intentionally withheld material information from the Board. In Plaintiff's version of the Section 220 universe, a stockholder is entitled to inspect informal communications simply because those communications exist. A0589.

Both the Senior Magistrate and then the Chancellor properly rejected that theory. After trial, the Senior Magistrate concluded that Mr. Sheffield's informal communications were not necessary and essential to the Demand's stated purpose. That is because Pioneer kept "extensive" ***formal*** records of Mr. Sheffield's actions

that leave little to the imagination.[1] Indeed Pioneer's formal board materials are "replete with . . . the timing and details of Mr. Sheffield['s] disclosures to the [B]oard" about his personal meetings with Mr. Woods. A0860-61. The Board even reviewed reproductions of Mr. Sheffield's text messages with Mr. Woods about the Merger. "Those messages show[ed] the two executives discussing Exxon[Mobil's] offer, Mr. Sheffield's potential role" in the combined company, and "how the executives could work together to present a plan to the public." A0845.

Plaintiff filed exceptions to the Senior Magistrate's well-reasoned scope determination, but the Chancellor adopted that portion of the Senior Magistrate's Final Report as a ruling of the Court of Chancery. Undeterred, Plaintiff now appeals the Court of Chancery's ruling. Plaintiff yet again contends that Mr. Sheffield's e-mails and text messages are necessary and essential because those e-mails and text messages exist.

Plaintiff's position runs contrary to Delaware law. Section 220 is a summary action that provides a qualified right to obtain a discrete set of documents necessary and essential to satisfy a proper purpose. Section 220 is not a vehicle for obtaining litigation-style discovery afforded under rules of civil procedure. Consistent with

[1] Ex. A to Appellant's Opening Brief ("OB") at 8; *Operating Eng'rs Constr. Indus. & Misc. Pension Fund v. Pioneer Nat. Res. Co.*, 2025 WL 2106580, at *4 (Del. Ch. July 28, 2025) (*Post-Trial Op.*).

this distinction, this Court has repeatedly held that a stockholder is not entitled to inspect informal communications where formal board materials on the same subjects are sufficient.

The Court of Chancery followed that rule. Both the Chancellor and the Senior Magistrate made a fact-specific determination that Plaintiff failed to identify any gaps in Pioneer's formal board materials meriting a broader production of e-mails and text messages. In so doing, the Court of Chancery considered—and rejected—the very same arguments that Plaintiff presses on appeal.

Plaintiff thus offers no basis to disturb the Court of Chancery's fact-specific conclusions, which reflect an exercise of sound discretion to which this Court liberally defers. Quite the opposite; most of Plaintiff's arguments simply mischaracterize or misinterpret the opinions below. This approach is designed to distract from the fact that Plaintiff's positions, if accepted, would make informal communications the rule rather than the exception under Section 220, effectively requiring corporations to produce e-mails and text messages any time those documents exist. Now that would "turn[] Section 220 on its head." OB at 38.

Unable to undermine the Court of Chancery's analysis, Plaintiff resorts to attacking the way it was written. Plaintiff alternatively argues that the Court of Chancery's opinion misunderstood Plaintiff's scope arguments to have relied exclusively on a consent order (the "Consent Order") that the Federal Trade

Commission (the "FTC") issued (after Plaintiff sent the Demand) but later vacated on the basis that it reflected administrative agency overreach. But the Court of Chancery made no mistake. The Court of Chancery's opinion makes clear that the Consent Order was not Plaintiff's sole basis for seeking a broader production. Plaintiff's disagreement with the Court of Chancery's rejection of the Consent Order is not reversible error.

In the end, nothing was "concealed" because nothing was hidden from the Board. *Id.* at 4. Plaintiff simply failed to carry its burden to prove that Mr. Sheffield's informal communications are necessary and essential in light of the formal board materials Plaintiff already received. The Senior Magistrate aptly recognized, and the Court of Chancery necessarily agreed, that Plaintiff's contrary arguments "would set a dangerous precedent[:] regardless of how forthright a director or officer is at board meetings, which are memorialized with detailed minutes and accompanying slides, that individual may still be compelled to produce electronic communications" simply because those messages exist. A0861. This Court should reach the same conclusion. Accordingly, and for the reasons below, the Court of Chancery's judgments should be affirmed.

SUMMARY OF ARGUMENT

1. **Denied**. The Court of Chancery did not abuse its broad discretion in limiting Plaintiff's inspection to Pioneer's extensive volume of formal board materials. Plaintiff failed to meet its burden to prove any gap or discrepancy in those materials necessitating a production of informal electronic communications on the same subjects documented in detail at the board level. Plaintiff's contrary argument—the existence of a document entitles a stockholder to inspect the document—would make production of informal, officer-level communications the rule, rather than the exception, under Section 220. The Court of Chancery did not exceed the bounds of reason or ignore settled law in rejecting Plaintiff's bid to convert Section 220 into a vehicle for obtaining plenary discovery.

2. **Denied**. Plaintiff's claim that the Court of Chancery misinterpreted its arguments is subject to clear error review. Plaintiff's misinterpretation of the Court of Chancery's decisions does not make them clearly erroneous. Regardless, the Court of Chancery did not err. The opinions below highlight that the Consent Order was not Plaintiff's only basis for seeking inspection beyond Pioneer's formal board materials. Plaintiff's disagreement with the Court of Chancery's rejection of the Consent Order is not a basis for reversal.

STATEMENT OF FACTS

This Court "will not overturn the Court of Chancery's factual findings unless they are clearly erroneous." *Bäcker v. Palisades Growth Cap. II, L.P.*, 246 A.3d 81, 94 (Del. 2020) (internal quotation marks omitted). The Chancellor adopted the Senior Magistrate's factual findings in full. *Post-Trial Op.*, 2025 WL 2106580, at *1. And Plaintiff does not argue that any of those findings are clearly erroneous. Accordingly, this Court should reject Plaintiff's "statement of facts" (which largely cites to its own briefs) to the extent it contradicts the record below. OB at 10-26.

A. The Parties and Relevant Non-Parties

Plaintiff is a former Pioneer stockholder. A0841. Pioneer was a publicly traded Delaware corporation. *Id.* Pioneer developed and commercialized oil and gas products. *Id.* At all relevant times, the Board comprised twelve directors. A0856; A0036. The Court of Chancery found that ten of those directors were independent, disinterested, and fully informed. *See, e.g.*, A0856.[2]

Scott Sheffield founded Pioneer and served as its CEO. A0740 (Stip. ¶ 18).[3] In April 2023, Pioneer publicly disclosed that Mr. Sheffield would retire as CEO at the end of the year. A0742 (Stip. ¶ 35). Pioneer also disclosed the payments and

[2] This finding forecloses Plaintiff's suggestion that anyone "controlled and dominated" the Board during the sale process. *See, e.g.*, OB at 10-11.

[3] Citations in the form of "Stip. ¶ [#]" refer to the parties' pre-trial joint stipulations of fact. *See* A0737-57.

benefits Mr. Sheffield stood to receive if he were terminated in connection with a change-of-control transaction like the Merger. *Id.* (Stip. ¶ 32); A0135-38. Accordingly, "the world"—including the Board—knew of any purported "conflicts" Mr. Sheffield might have possessed during the sale process. A0849; *cf.* OB at 11-13.

ExxonMobil manufactures, produces, transports, and sells crude oil, natural gas, petroleum products, petrochemicals, and a wide variety of specialty products. A0327. Darren Woods is ExxonMobil's CEO. A0844.

B. Pioneer Merges with ExxonMobil

During its public life, Pioneer routinely met with representatives of other oil and gas exploration and production companies, including ExxonMobil, to discuss potential transactions. A0366. Pioneer management kept the Board updated on these discussions. *Id.*

In spring 2023, Pioneer initiated a strategic alternatives review. A0367. Early in the process, *The Wall Street Journal* reported a rumor that Pioneer and ExxonMobil had discussed the possibility of ExxonMobil acquiring Pioneer. A0842. Mr. Sheffield immediately prepared a memorandum to the Board to address this story. *Id.* Mr. Sheffield explained that "he did not believe Exxon[Mobil] had sincere interest" in making an actionable proposal to acquire Pioneer. *Id.* The Board met

two days later to discuss Mr. Sheffield's memorandum and Pioneer's M&A strategy more generally. A0842-43.

On June 28, 2023, the Board met to receive updates on the sale process. A0367. Mr. Sheffield informed the Board that Pioneer had received several indications of interest from potential strategic bidders. A0843. During this report, Mr. Sheffield also disclosed that he had a discussion with Mr. Woods regarding the concept of a stock-for-stock merger between Pioneer and ExxonMobil. A0367. Mr. Sheffield told Mr. Woods that any such transaction would be unacceptable unless it afforded a meaningful premium for Pioneer's stockholders. *Id.* In other words, Mr. Sheffield "was not singularly focused" on a deal with ExxonMobil. A0844.

To the contrary, "a deal with Exxon[Mobil] was not the only potential transaction [Pioneer] contemplated." A0843. Pioneer viewed itself as both a potential buyer and a potential seller. A0842. For example, Pioneer was considering an acquisition of another company, "Party A," which operated in the same market as Pioneer. A0367; A0843-44. Throughout the summer, the Board met with its advisors to consider a transaction with Party A in addition to a transaction with ExxonMobil and other potential transaction partners. A0367-68; A0744-45 (Stip. ¶ 42).

On September 6, 2023, Mr. Sheffield met with Mr. Woods to discuss a potential Pioneer-ExxonMobil transaction. A0368; A0745 (Stip. ¶ 43). Mr.

Sheffield had previously told the Board that he would attend this meeting. A0844. "[J]ust one day after that meeting," Mr. Sheffield "promptly reported back to the [B]oard" and disclosed his discussion with Mr. Woods "in detail." *Id.* Among other things, Mr. Sheffield told Mr. Woods that he personally believed a premium of at least 20% above the then-current "at the market" exchange ratio would be necessary for the Board to consider any deal with ExxonMobil, but that the Board had not yet discussed or authorized any deal parameters. A0745 (Stip. ¶ 44). During the same Board meeting, Mr. Sheffield also "reported on discussions with . . . Party A." A0844.[4]

On September 18, 2023, ExxonMobil made a formal proposal to acquire Pioneer. A0259-62; A0368; A0746 (Stip. ¶ 46); A0845. The proposal contemplated a stock-for-stock merger that reflected a 9% premium to Pioneer's most recent closing price. A0259; A0368; A0746 (Stip. ¶ 46). ExxonMobil also indicated that it was "open to considering inviting" a member of the Board to join ExxonMobil's board. A0261; A0368; A0746 (Stip. ¶ 46). After Pioneer received ExxonMobil's proposal, Messrs. Woods and Sheffield communicated informally (e.g., through text messages) about a potential transaction. A0845.

[4] Discussions with Party A culminated in a merger proposal, A7045-46 (Stip. ¶ 45), but the Board ultimately declined to pursue it.

The Board knew about those communications. For its September 22, 2023 meeting, the Board reviewed a packet of materials containing actual reproductions of Mr. Sheffield and Mr. Woods's text messages from the days before. A0264-68; A0746-47 (Stip. ¶¶ 47-48). "Those messages show[ed] the two executives discussing Exxon[Mobil's] offer, Mr. Sheffield's potential role" in the combined company, and "how the executives could work together to present a plan to the public." A0845. Mr. Sheffield further elaborated on those conversations during the September 22 meeting. A0845-46. After deliberation, and with advice from its advisors, the Board unanimously rejected ExxonMobil's offer but authorized Mr. Sheffield to negotiate with Mr. Woods. A0846; A0307; A0368.

"Mr. Sheffield did as [the Board] directed." A0846. For example, on September 24 and 26, 2023, Mr. Sheffield spoke with Mr. Woods about improving ExxonMobil's offer. *Id.*; A0368-69. Discussion items included the possibility of Mr. Sheffield serving as a director on ExxonMobil's board. A0369; A0747 (Stip. ¶ 49). Mr. Sheffield disclosed these conversations to the Board, either on the same day or the very next day after they occurred. A0369; A0846. On September 26, 2023, the Board unanimously resolved to proceed with ExxonMobil, and the parties began to conduct diligence under a confidentiality agreement. A0369; A0846.

Negotiations continued over the ensuing weeks. A0371. The Board met with its advisors and management numerous times to review updates on the proposed

transaction and key unresolved issues. *Id.* As directed, Mr. Sheffield continued to report to the Board "in detail" about his communications with Mr. Woods. A0847. The conversations included the potential exchange ratio and ultimate percent ownership for Pioneer stockholders in the combined company. *Id.*; A0749 (Stip. ¶ 57).

The Board met to consider those topics. A0750 (Stip. ¶ 59). To that end, Mr. Sheffield again "reported on [his] discussions" with Mr. Woods to the Board. A0847; A0373. For example, Mr. Sheffield specifically disclosed that the parties had agreed Pioneer stockholders would own 11.875% of the combined company, "subject to Board approval." A0750 (Stip. ¶ 59). But Mr. Sheffield disputed Mr. Woods's share-count calculation methodology, which yielded a valuation difference less favorable to Pioneer, and instead insisted on a share-count methodology that favored Pioneer. A0372-73. Once again, Mr. Sheffield "was not singularly focused" on a deal with ExxonMobil, nor did he simply accede to ExxonMobil's positions. A0844.

On October 10, 2023, the Board met to decide whether to approve the Merger. A0373-74; A0750 (Stip. ¶ 60). During this meeting, Mr. Sheffield "again presented on his negotiations with Mr. Woods, providing detailed information, like the specific terms and figures discussed, the back and forth that occurred, and when those discussions happened." A0848. Mr. Woods also attended the meeting to provide ExxonMobil's perspective on the negotiations. *Id.*

After deliberating on numerous considerations (considerations that were publicly disclosed to stockholders), including its financial advisor's fairness opinion, the Board approved the Merger. A0373-79. Under the final terms, Pioneer stockholders exchanged their shares for 2.3234 shares of ExxonMobil common stock, for a 19.9% premium over Pioneer's unaffected stock price. A0375; A0750 (Stip. ¶ 60). This exchange ratio implied a value of $253.23 per share for Pioneer stockholders. A0303.

On January 8, 2024, Pioneer issued its definitive proxy statement (the "Proxy"). A0308. On February 7, 2024, almost 99% of voting stockholders approved the Merger. A0679. On May 3, 2024, the Merger closed.[5] A0752 (Stip. ¶ 65).

One day before the Merger closed, the FTC issued the Consent Order, which resolved certain allegations that the FTC had made against Mr. Sheffield. A0751 (Stip. ¶ 64). The FTC claimed that Mr. Sheffield used "text messages" to "discuss crude oil market dynamics, pricing, and output" in an allegedly "anticompetitive" way. *Post-Trial Op.*, 2025 WL 2106580, at *2 (cleaned up). The text messages referenced in the Consent Order did not involve the Merger. *Id.* at *4; A0860. Ultimately, the FTC vacated the Consent Order because, upon reconsideration, the

[5] Pioneer stockholders ultimately received an even higher premium, because ExxonMobil was trading at $116.24 per share at closing. A0752 (Stip. ¶ 65).

FTC determined that the agency's allegations about Mr. Sheffield's conduct were "[in]sufficient to state a claim[,] . . . inappropriate[,] and . . . not in the public interest."[6]

C. Pioneer Produces Hundreds of Pages of Formal Board Materials in Response to the Demand

On January 29, 2024, Plaintiff made the Demand on Pioneer. A0738 (Stip. ¶ 4). The Demand supposedly sought books and records to investigate whether Mr. Sheffield misled the Board about his negotiations with ExxonMobil. A0780. To support a credible basis for this claimed "proper purpose," the Demand initially identified two topics allegedly concealed from the Board: (1) the substance of Messrs. Sheffield and Woods's September 6 meeting; and (2) Mr. Sheffield's supposed knowledge of a goodwill impairment charge that ExxonMobil recognized months after the merger agreement was signed. A0563; A0565. As to scope, the Demand requested a sweeping production of "28 categories" of formal board

[6] *See* Fed. Trade Comm'n, *Statement of Commissioner Mark R. Meador in the Matters of ExxonMobil Co./Pioneer Natural Resources Co. Matter Number C4815 and Chevron Corporation/Hess Corporation Matter Number C4814* (July 17, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/meador-statement-exxon-pioneer-and-chevron-hess.pdf; Fed. Trade Comm'n, *FTC Reopens and Sets Aside Exxon-Pioneer Final Order* (July 17, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/07/ftc-reopens-sets-aside-exxon-pioneer-final-order. This Court takes judicial notice of public records from governmental authorities. *See, e.g.*, *Hazout v. Tsang Mun Ting*, 134 A.3d 274, 280 n.13 (Del. 2016).

materials and informal, officer-level communications, "not including subparts." A0850; A0565-68.

"Pioneer produced many hundreds of pages of" formal board-level documents in response to the Demand. *Post-Trial Op.*, 2025 WL 2106580, at *1. These documents included "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." *Id.* Those documents also included the reproductions of the text messages between Messrs. Sheffield and Woods that the Board reviewed. A0746 (Stip. ¶ 47).

Given Pioneer's robust productions—coupled with the wealth of information publicly disclosed about the Merger—Plaintiff abandoned its pursuit of documents related to the September 6 meeting and the goodwill impairment. A0745 (Stip. ¶ 43); A0779. Indeed, rather than claim that Mr. Sheffield *hid* his September 6 meeting with Mr. Woods from the Board, Plaintiff flip-flopped to claim that Mr. Sheffield *in fact highlighted* the substance of that meeting for the Board. A0746-47 (Stip. ¶¶ 47-48). And Plaintiff abandoned its claim that Mr. Sheffield became aware in early October 2023 of an impairment charge that ExxonMobil did not announce until January 2024.

That should have been the end of this matter. Yet, Plaintiff instead began demanding production of text messages and e-mails sent between Messrs. Sheffield and Woods at any time from June 1, 2023 to October 11, 2023. A0852.[7] That is because Pioneer's counsel, at the Court of Chancery's request, reviewed those communications to narrow the parties' dispute and determined that at least some of them were "substantive." A0819. Seizing on that representation, Plaintiff's basis for seeking an additional production of Mr. Sheffield's informal communications boiled down to an argument that "[t]hey exist[,] so we should have them." A0859.

Pioneer declined to produce those documents "on principle." A0857. It is true that Mr. Sheffield exchanged some "substantive" informal communications with Mr. Woods that Mr. Sheffield did not share with the Board. A0819. And Plaintiff continues to harp on this fact. *See, e.g.*, OB at 34. But as Pioneer has explained repeatedly—and the Court of Chancery and Senior Magistrate agreed—the question is not whether additional substantive documents exist. *See* A0818-19; A0859; *Post-Trial Op.*, 2025 WL 2106580, at *4. Instead, the relevant question is whether Plaintiff has satisfied its burden to prove that informal documents are

[7] Plaintiff originally sought an even broader date range of January 1, 2023 to February 7, 2024. A0752 (Stip. ¶ 67(a)); A0851-52. Plaintiff praises itself for tailoring scope, OB at 3, but as explained below, this appeal does not turn on a particular timeframe. It instead turns on Plaintiff's burden to prove its entitlement to informal materials, regardless of the timeframe Plaintiff seeks. *See Post-Trial Op.*, 2025 WL 2106580, at *4.

necessary and essential to accomplishing the Demand's stated purposes in light of the formal board-level documents Plaintiff already has received showing what information the Board was provided. *See* A0819; A0859-60; *Post-Trial Op.*, 2025 WL 2106580, at *4.

D. The Senior Magistrate Rejects Plaintiff's Overbroad Demand for Mr. Sheffield's Informal Electronic Communications

On January 9, 2025, the Senior Magistrate held a one-day trial on Plaintiff's entitlement to Mr. Sheffield's personal electronic communications. A0762. With the benefit of Pioneer's voluminous productions, the parties entered sixty-six stipulations of fact and introduced fifty-four joint exhibits. A0737; A0758.

On January 16, 2025, the Senior Magistrate issued a well-reasoned, post-trial final report ruling in Pioneer's favor (the "Final Report"). A0837. The Final Report determined that Plaintiff "failed to demonstrate that [informal communications] are necessary and essential . . . to [the Demand's] stated purpose." A0852. In reaching that conclusion, the Final Report first "dispose[d] of" the "red herring" undergirding Plaintiff's arguments throughout these proceedings: that the ***existence*** of informal communications necessarily means Plaintiff is ***entitled*** to inspect informal communications. A0859. As the Final Report succinctly stated, "[t]hat's not the test." *Id.* Instead, the Final Report explained that Plaintiff bore the "burden to prove that the board materials [Pioneer] produced . . . [were] insufficient to address" the

Demand's investigative purpose and that the informal communications are "necessary and essential . . . to that end." A0859-60.

Having articulated the correct standard, the Final Report rejected Plaintiff's claimed need for informal communications. A0860-64. Plaintiff failed to prove that Pioneer lacked formal records of its Board meetings. A0863-64. Plaintiff failed to prove that the Board conducted business through informal channels. *Id.* And Plaintiff failed to identify any gaps in Pioneer's formal board-level documents that could only be filled with informal, officer-level communications. A0860-61; A0864.

That is not surprising. The Final Report found "the record [to be] replete with [B]oard materials showing the timing and details of Mr. Sheffield['s] disclosures to the [B]oard." A0860. The Final Report further found that the Board was not misled because Mr. Sheffield's informal "communications were disclosed to the [B]oard and those discussions were documented in detail" at the Board level. A0864. Given the amount of formal material addressing the topics that Mr. Sheffield discussed with Mr. Woods, the Final Report concluded that an additional production of Mr. Sheffield's texts and e-mails was "not necessary, essential, or narrowly tailored to [Plaintiff's] purpose for inspection." A0860. The Final Report cautioned that a contrary outcome "would set a dangerous precedent[:] regardless of how forthright a director or officer is at board meetings, *which are memorialized with detailed*

minutes and accompanying slides, that individual may still be compelled to produce electronic communications to disprove a stockholder's suspicions." A0861 (emphasis added).

E. The Chancellor Rejects Plaintiff's Overbroad Demand for Mr. Sheffield's Informal Electronic Communications

On January 17, 2025, Plaintiff filed exceptions to the Final Report. A0868. Relevant here, Plaintiff claimed that it was entitled to inspect Mr. Sheffield's informal communications because some informal communications "were not disclosed to the Board." A0919 (emphasis omitted). Plaintiff thus relied again on what the Final Report described as the "red herring" that it was entitled to inspect Mr. Sheffield's informal communications simply because those communications exist. A0859.

On July 28, 2025, the Chancellor adopted the Final Report's factual findings and scope determination. The Chancellor observed that a stockholder is not entitled to inspect informal communications unless the stockholder "show[s] a discrepancy between public disclosures" and the corporation's formal board-level documents or that those documents "do not provide details as to key events." *Post-Trial Op.*, 2025 WL 2106580, at *3. Under this standard, Plaintiff "failed to identify the foothold needed to inspect beyond" Pioneer's board-level documents. *Id.* at *4. The Chancellor rejected Plaintiff's conclusory allegation that Mr. Sheffield "withheld key information from the Board" because Plaintiff did not point to anything in

Pioneer's "extensive" production of formal materials suggesting he did. *Id.* at *4 & n.40 (citing A0599 ¶ 33). In reaching that conclusion, the Chancellor explained that "[t]he mere possibility that some additional details might exist in [Mr. Sheffield's] informal communications does not render those documents 'necessary and essential' to understanding the Board's decision-making." *Id.* at *4.

Finally, the Chancellor rejected Plaintiff's "addition[al]" arguments regarding the Consent Order. *Id.* at *2, *4. The Chancellor reasoned that just because Mr. Sheffield texted about unrelated events underlying the Consent Order does not mean Plaintiff is entitled to inspect his texts about the Merger. *Id.* at *4 ("[A] fiduciary's . . . texts sent in one context does not entitle a stockholder to inspect that fiduciary's text for all purposes.").

F. This Appeal

This appeal followed. Plaintiff seeks reversal for two reasons. First, Plaintiff argues that the Court of Chancery abused its discretion in declining to order production of Mr. Sheffield's informal communications because Plaintiff supposedly had "some evidence" warranting such a production. OB at 27-42. Second, Plaintiff argues that the Chancellor "abused [her] discretion" because her decision somehow "mistakenly conclude[d]" that Plaintiff based its case "solely on the Consent Order." *Id.* at 43-47. For the reasons below, this Court should affirm.

ARGUMENT

I. THE COURT OF CHANCERY DID NOT ABUSE ITS DISCRETION BY LIMITING INSPECTION TO FORMAL BOARD MATERIALS

A. Questions Presented

Whether the Court of Chancery abused its discretion in limiting inspection to Pioneer's formal board-level documents when Plaintiff failed to meet its burden of proving that informal, text message communications were necessary and essential to the Demand's purported investigative purpose. A0915-23; A0992-97.

B. Scope of Review

This Court "review[s] for abuse of discretion the Court of Chancery's determination of both the scope of relief and any limitations or conditions on that relief." *KT4 P'rs LLC v. Palantir Techs. Inc.*, 203 A.3d 738, 748 (Del. 2019). That is a "highly deferential" standard. *Wal-Mart Stores, Inc. v. Ind. Elec. Workers Pension Tr. Fund IBEW*, 95 A.3d 1264, 1272 (Del. 2014). An abuse of discretion occurs only "when a court has exceeded the bounds of reason in light of the circumstances, or so ignored recognized rules of law or practice so as to produce an injustice." *Berry v. State*, --- A.3d ---, 2025 WL 2639971, at *4 (Del. Sept. 15, 2025). Accordingly, this Court liberally defers to the Court of Chancery's "sound discretion" when it makes "fact specific determination[s]" as to whether informal communications are necessary and essential to an inspection demand's stated

purpose. *NVIDIA Corp. v. City of Westland Police & Fire Ret. Sys.*, 282 A.3d 1, 27 (Del. 2022).

C. Merits of Argument

Pioneer's "extensive" formal board materials—as well as Pioneer's detailed public disclosures—have enabled Plaintiff to write hundreds of pages of factual allegations in its briefs to the Court of Chancery and this Court. *Post-Trial Op.*, 2025 WL 2106580, at *4; OB at 10-26. By any measure, Plaintiff "has sufficient material in [Pioneer's] productions to date to move forward" with its purported investigation of the Merger's fairness. A0860. Plaintiff nevertheless argues that it is entitled to litigation-style discovery into Mr. Sheffield's informal communications over a six-month period simply because those communications exist. *See, e.g.*, OB at 1, 23. As explained below, the Court of Chancery did not abuse its discretion by making a fact-specific determination that Plaintiff was not entitled to inspect Mr. Sheffield's texts and e-mails because (1) Plaintiff failed to prove that Pioneer's formal board-level documents were insufficient to satisfy the Demand; and (2) Plaintiff's contrary arguments did not support a different outcome.

1. Plaintiff Failed to Prove an Entitlement to Inspect Mr. Sheffield's Informal Electronic Communications.

Plaintiff does not challenge the Court of Chancery's factual finding that Pioneer maintained "extensive" and "detailed" formal corporate records documenting Mr. Sheffield's negotiations with ExxonMobil. *Post-Trial Op.*, 2025

WL 2106580, at *4; A0861. Plaintiff instead argues that the Court of Chancery erred in limiting inspection to Pioneer's formal board materials because those materials did not document every single one of Mr. Sheffield's informal electronic communications with ExxonMobil. *See, e.g.*, OB at 33. In other words, Plaintiff argues that it is entitled to inspect Mr. Sheffield's informal communications because those communications exist. The Court of Chancery did not abuse its discretion by finding that Plaintiff failed to meet its burden to prove Mr. Sheffield's informal communications were necessary and essential to the Demand's stated purposes in light of the voluminous formal board materials Plaintiff received. *See Thomas & Betts Corp. v. Leviton Mfg. Co.*, 681 A.2d 1026, 1035 (Del. 1996) ("[T]he burden of proof is always on the [stockholder] to establish that each category of the books and records requested is essential and sufficient to the stockholder's stated purpose.").

Section 220 "does not open the door to the wide ranging discovery that would be available in support of [plenary] litigation." *Saito v. McKesson HBOC, Inc.*, 806 A.2d 113, 114 (Del. 2002). Instead, "the Court of Chancery must tailor its order for inspection to cover only those books and records that are essential and sufficient to the stockholder's stated purpose." *Palantir*, 203 A.3d at 751-52 (cleaned up). Under this standard, formal board-level documents are "the starting point—and typically the ending point—for a sufficient inspection." *In re Zendesk, Inc. Section 220 Litig.*, 2023 WL 5496485, at *10 (Del. Ch. Aug. 25, 2023) (David, M.). Accordingly, to

establish an "atypical" entitlement to inspection beyond Pioneer's presumptively sufficient formal board materials, Plaintiff bore the burden to prove that Pioneer either (i) "did not honor traditional corporate formalities" or (ii) its "traditional materials, such as board resolutions or minutes," omit key events or materially contradict publicly disclosed information. *Okla. Firefighters Pension & Ret. Sys. v. Amazon.com, Inc.*, 2022 WL 1760618, at *12 (Del. Ch. June 1, 2022).

Plaintiff failed to meet this burden—twice. In response to the Demand, "Pioneer produced many hundreds of pages of [formal board-level] documents." *Post-Trial Op.*, 2025 WL 2106580, at *1. Those materials not only provide in-depth insight into the Board's discussions of the Merger, but also are "replete with . . . the timing and details of Mr. Sheffield['s] disclosures to the [B]oard" about his negotiations with Mr. Woods. A0860. Indeed, Mr. Sheffield's meetings with Mr. Woods "were documented in detail" at the Board level, including in "minutes and accompanying slides." A0861; A0864. The Board even reviewed reproduced versions of Mr. Sheffield's text conversations with Mr. Woods. A0746-47 (Stip. ¶¶ 47-48). Those messages showed Mr. Sheffield discussing the very topics supposedly concealed from the Board. A0844. All this information gave Plaintiff a first-hand look at "the two executives discussing Exxon's offer, Mr. Sheffield's potential role after a [M]erger . . . the specific terms and figures [Messrs. Sheffield and Woods] discussed, the back and forth that occurred, and when those discussions

happened." A0845; A0848. In short, no "key events" were omitted from Pioneer's formal board materials. *Post-Trial Op.*, 2025 WL 2106580, at *4. "[T]aking into account the [formal] books and records" Pioneer produced to Plaintiff, as well as information Pioneer "already disclosed" in the Proxy, the Court of Chancery did not abuse its discretion by declining to order a broader inspection of Mr. Sheffield's informal communications. *Espinoza v. Hewlett-Packard Co.*, 32 A.3d 365, 372 (Del. 2011).

Plaintiff does not meaningfully argue otherwise. Instead, Plaintiff tries to analogize this case to *Palantir*. OB at 40-41. But *Palantir* could not be more different. There, the company's board conducted "corporate business without documenting its actions in minutes and board resolutions or other formal means." *Palantir*, 203 A.3d at 758; *see also id.* at 754. As a result, director e-mails were "the ***only*** documentary evidence" of the challenged board decision. *Id.* at 758 (emphasis added). Under those circumstances, this Court held that the Court of Chancery abused its discretion by declining to order a production of the directors' informal communications. *Id.*

Here, Plaintiff never argued that Pioneer failed to maintain formal records or the Board conducted business exclusively through informal channels. Nor could it. "The record" demonstrated "[q]uite the opposite." A0864. Pioneer convened "frequent formal board meetings with robust discussions guided by slide decks [that

were] memorialized in detailed minutes." *Id.* Given those materials, the Court of Chancery properly exercised its discretion in holding that Pioneer's "non-[electronic] books and records" were not necessary and essential to the Demand's stated purpose. *Palantir*, 203 A.3d at 753.

Plaintiff's meager attempt to invoke *Palantir* reveals its real argument: a stockholder is entitled to inspect an officer's informal communications whenever there is "some evidence" that the officer communicated informally. OB at 41. But "[t]hat's not the test." A0859. Electronic communications are "the exception rather than the rule" under Section 220. *In re UnitedHealth Gp., Inc. Section 220 Litig.*, 2018 WL 1110849, at *9 (Del. Ch. Feb. 28, 2018), *aff'd sub nom. UnitedHealth Gp. Inc. v. Amalgamated Bank*, 196 A.3d 885 (Del. 2018) (TABLE). "After all, the point of a summary [Section] 220 action is to give the stockholder access to a discrete set of books and records . . . that is ***much less*** extensive than would likely be produced in discovery under the standards of Rule 26 in a plenary suit." *Palantir*, 203 A.3d at 755 (emphasis added). Accordingly, "the corporation should not have to produce [informal] documents" when it maintains formal materials on the same subjects. *Id.* at 756. And that is what Pioneer did here. The Senior Magistrate, and then the Court of Chancery, thus properly rejected Plaintiff's bid to "set a dangerous precedent" that would "compel[]" a corporation "to produce electronic communications" no

matter "how forthright a director or officer is at board meetings" or level of detail in the board's "minutes and accompanying slides." A0861.

As a last resort, Plaintiff claims entitlement to Mr. Sheffield's informal communications because the Board did not "supervise" his text messages with Mr. Woods. *See* OB at 40-41. Plaintiff's vision of parental control over an officer's cellphone is strange enough by itself, but principally, it disregards the reality that transactions "are normally negotiated by management . . . not by the directors themselves." *Grobow v. Perot*, 526 A.2d 914, 926 n.15 (Del. Ch. 1987), *aff'd*, 539 A.2d 180 (Del. 1988).[8] For that reason, "[t]here is nothing inherently wrong with a Board delegating to [an allegedly] conflicted CEO the task of negotiating a transaction." *City of Fort Myers Gen. Empls.' Pension Fund v. Haley*, 235 A.3d 702, 721 n.69 (Del. 2020). And here—even after crediting a "conflict"—the Court of Chancery still found nothing wrong with such a delegation. That is because the trial court found the Board to be disinterested, independent, and fully informed—a factual determination that Plaintiff does not dispute. A0856. Necessarily, then, there were no "unsupervised" negotiations between Messrs. Sheffield and Woods. OB at 40; *see* A0856 (rejecting theory that Mr. Sheffield "somehow completely tipped the

[8] During trial, the Senior Magistrate noted that it is "not unusual" in the 21st century for corporate officers to negotiate transaction terms "by text." A0830. Plaintiff did not disagree. A0831.

scales in his favor"). Plaintiff cannot wash away Pioneer's formal board materials simply because "the Board itself [did not] engage in face-to-face negotiations" with Mr. Woods. *Grobow*, 526 A.2d at 926 n.15.

* * *

In sum, this case does not present an "atypical circumstance[]" where formal board-level documents are insufficient. *Amazon*, 2022 WL 1760618, at *12. "The mere possibility that some additional details might exist" in other informal materials does not undermine the sufficiency of these formal materials Plaintiff received. *Post-Trial Op.*, 2025 WL 2106580, at *4; *see Norfolk Cnty. Ret. Sys. v. Jos. A. Bank Clothiers, Inc.*, 2009 WL 353746, at *6 (Del. Ch. Feb. 12, 2009) ("Even if a plaintiff demonstrates a proper purpose, that plaintiff is not entitled to inspect all the documents that he or she believes are relevant or even likely to lead to information relevant to that purpose."), *aff'd*, 977 A.2d 899 (Del. 2009) (TABLE). This Court should affirm the decisions below because they do not reflect an abuse of discretion.

2. Plaintiff's Contrary Arguments Lack Merit.

To resist this result, Plaintiff advances a barrage of loosely connected arguments. OB at 32-42. All confirm that Pioneer's productions are sufficient.

Plaintiff first argues that the Court of Chancery abused its discretion because Plaintiff "identified . . . information" about Mr. Sheffield's purported "conflicts" that he supposedly withheld from the Board. *Id.* at 11-13, 36, 39. But the source of that

supposed "information" is the extensive formal documents that Pioneer produced—the Board minutes and materials that Plaintiff repeatedly draws on to argue that Mr. Sheffield was acting to further his own interests. *Id.* at 35-36. Indeed, as Plaintiff concedes, Pioneer's production reflects "repeated occasions during the deal process" when Mr. Sheffield communicated with Mr. Woods and then *shared* updates from those discussions with the Pioneer Board. *Id.* at 36-37. That evidence established Mr. Sheffield's repeated pattern of disclosing to the Board in detail his discussions with Mr. Woods—not withholding them. *See* A0856, A0860 (declining to credit inference that Mr. Sheffield steered a supermajority of independent directors on the Board). Accordingly, the Court of Chancery did not abuse its discretion by adopting the Senior Magistrate's finding that "[d]igging into Mr. Sheffield's electronic communications—given the amount of detail Mr. Sheffield has already disclosed—is not necessary, essential, or narrowly tailored to [] [P]laintiff's purpose for inspection." A0860.

Plaintiff next "makes much of [Pioneer's] concession that" additional "electronic communications exist," A0859, and "are substantive," OB at 33-35. Plaintiff says this "admission" supplies "some evidence" that Pioneer's formal board materials are deficient. *Id.* at 35, 37. In other words, Plaintiff argues that it is entitled to Mr. Sheffield's e-mails and text messages with Mr. Woods because those e-mails and text messages exist. The Court of Chancery adopted the Senior Magistrate's

rejection of this "red herring," which seeks to conflate the existence of a document with an entitlement to the document. A0859. The Court of Chancery did not abuse its discretion by declining to convert Section 220 into a vehicle for obtaining litigation-style discovery into Mr. Sheffield's cellphone and inbox. *See, e.g.*, *Gross v. Biogen Inc.*, 2021 WL 1399282, at *13 & n.103 (Del. Ch. Apr. 14, 2021) ("Section 220 is not a license to obtain the equivalent of comprehensive discovery under Court of Chancery Rule 34." (collecting this Court's authority)).

Plaintiff next argues that the Court of Chancery abused its discretion because Plaintiff "demonstrated" two purported "discrepanc[ies]" between Pioneer's board materials and the Proxy: that Mr. Sheffield "disclosed only some, but not all, of his substantive text message communications to the Board" and "undercut Pioneer's negotiating position repeatedly." OB at 39-40. This argument is waived because Plaintiff did not raise it below. Del. Supr. R. 8; *Mammarella v. Evantash*, 93 A.3d 629, 636 (Del. 2014). It also fails on the merits because even if these were real "discrepanc[ies]," Plaintiff does not claim any of them are ***material***. That alone is dispositive because, as Plaintiff's own authorities confirm (OB at 31 & nn.156-57), a stockholder is not entitled to inspect informal materials if the purported discrepancy between board materials and public disclosures is immaterial:

- In *SharpSpring*, the Court of Chancery ordered a production of informal communications because the corporation's board minutes and proxy statement "reflected different accounts" of a target CEO's involvement in the sale process. *Hightower v. SharpSpring, Inc.*, 2022 WL 3970155, at

*3-4 (Del. Ch. Aug. 31, 2022) (explaining that the proxy statement omitted material facts discussed in the board minutes, including that the CEO negotiated price while simultaneously negotiating a bonus pool diverting deal value to himself).

- In *CBS*, the Court of Chancery ordered a production of informal communications where board committee minutes omitted that the company's controller attended the meeting in violation of a settlement agreement preventing her from making the very acquisition proposal ultimately disclosed to stockholders. *Bucks Cnty. Empls. Ret. Fund v. CBS Corp.*, 2019 WL 6311106, at *3, *7, *9 (Del. Ch. Nov. 25, 2019).

- And in *Empire Resorts*, the Court of Chancery ordered production of informal communications where the proxy statement omitted that a special committee approved a set of merger projections that did not include significant revenue and profits data shown to the board in an otherwise-identical set of projections during a meeting held earlier in the day. *Brown v. Empire Resorts, Inc.*, C.A. No. 2019-0908-KSJM, at 24, 26, 42, 58 (Del. Ch. Feb. 20, 2020) (TRANSCRIPT).

By contrast, Plaintiff does not identify any comparable material inconsistency between Pioneer's production and the Proxy. Plaintiff offered no evidence that the Board minutes omitted Mr. Sheffield's attendance at a Board meeting or misrepresented his role in valuing Pioneer or negotiating the Merger. To the contrary, Pioneer's formal board-level materials are "replete with . . . the timing and details" of Mr. Sheffield's involvement in the sale process, including price terms. A0860.

The Proxy is too. Pioneer disclosed Mr. Sheffield's lead role in negotiating with ExxonMobil. A0366-74. And Pioneer disclosed his retirement incentives, including the change-of-control trigger. A0428-29. These disclosures together put

"the world" on notice of Mr. Sheffield's potential conflicts regarding the Merger. A0849. Plaintiff cannot point to the absence of an immaterial, "self-flagellati[ng]" disclosure about Mr. Sheffield's role in the Merger as a basis to inspect his informal communications. *See, e.g.*, *Loudon v. Archer-Daniels-Midland Co.*, 700 A.2d 135, 143 (Del. 1997); *see also Williams v. Geier*, 1987 WL 11285, at *5 (Del. Ch. May 20, 1987) ("[P]roxy materials need not disclose legal theories or plaintiff's characterizations of the facts.").

To distract from the sufficiency of Pioneer's production, Plaintiff claims that the Court of Chancery gave Plaintiff the "impossible task" of "specify[ing] what is in the [additional information communications] before ordering their production." OB at 37-42. But this simply mischaracterizes the opinions below. The Court of Chancery held that Plaintiff failed to identify anything in Pioneer's production suggesting that Mr. Sheffield "withheld key information from the Board." *Post-Trial Op.*, 2025 WL 2106580, at *4. Without that "foothold," the Chancellor held that Plaintiff is not entitled to fish around for what information "might be" in Mr. Sheffield's other informal communications. *Id.* Plaintiff's attempted rewrite of the Court of Chancery's rulings does not render those rulings an abuse of discretion.

Finally, Plaintiff insists that Pioneer's production leaves Plaintiff with "critical unanswered question[s]" about how Mr. Sheffield "conduct[ed] himself in [] text messages and e-mails" to ExxonMobil. OB at 46. Put differently, Plaintiff's

"position is that so long as [it] has questions that are left unanswered, or rocks [it] has not overturned, [it] is entitled to more. That is not [Delaware] law, particularly in the context of board and management communications." *In re Aspen Tech., Inc. Section 220 Litig.*, 2025 WL 2828269, at *3 n.45 (Del. Ch. Oct. 6, 2025) (internal quotation marks omitted). Even if additional informal communications "might be interesting" or "may be helpful" for answering Plaintiff's questions or bringing subsequent plenary litigation, that does not make those informal communications "necessary" under Section 220. *In re Lululemon Athletica Inc. Section 220 Litig.*, 2015 WL 1957196, at *7 (Del. Ch. Apr. 30, 2015). Plaintiff's "questions" do not establish an abuse of discretion.

* * *

"Keeping in mind that § 220 inspections are not tantamount to comprehensive discovery, the Court of Chancery must . . . give the [stockholder] everything that is essential, but stop at what is sufficient." *Palantir*, 203 A.3d at 751-52 (cleaned up). That is exactly what the Court of Chancery did here by limiting Plaintiff's inspection to Pioneer's extensive formal materials. This Court should affirm the Court of Chancery's fact-specific and discretionary judgment that Pioneer's formal board materials were sufficient to address the Demand's stated purpose. *NVIDIA*, 282 A.3d at 27-28.

II. THE COURT OF CHANCERY UNDERSTOOD PLAINTIFF'S ARGUMENTS

A. Questions Presented

Whether the Court of Chancery clearly erred when it accurately described Plaintiff's arguments. A0915-23; A0992-97.

B. Scope of Review

Plaintiff frames its second point as an abuse of discretion, OB at 43, but this Court reviews for clear error a party's claim that a trial court "misunderstood and consequently mischaracterized its argument," *In re Shorenstein Hays-Nederlander Theatres LLC Appeals*, 213 A.3d 39, 66 (Del. 2019). A trial court's descriptions of a party's arguments do not justify reversal "unless they are clearly wrong" and materially affect the outcome. *DV Realty Advisors LLC v. Policemen's Annuity & Benefit Fund of Chi.*, 75 A.3d 101, 108 (Del. 2013).

C. Merits of Argument

Plaintiff's alternative argument rests exclusively on the Consent Order. Plaintiff introduced the Consent Order at trial even though it post-dated the Demand. This Court is currently considering the question of whether post-demand evidence is admissible to support a demand's stated purpose. *See generally Paramount Global v. State of Rhode Island Office of the General Treasurer ex rel. Employees' Retirement System of Rhode Island*, No. 129, 2025 (Del. Mar. 27, 2025) (*Paramount*). Pioneer respectfully submits that this appeal does not depend on the outcome of

Paramount because, even with the Consent Order, and as explained more fully below, the Court of Chancery did not err in declining to order production of Mr. Sheffield's informal communications.

Plaintiff says the Court of Chancery "mistakenly concluded" that Plaintiff was seeking informal communications solely because of the Consent Order. OB at 43-44, 47. But Plaintiff—not the Court of Chancery—is "clearly wrong" here. *DV Realty*, 75 A.3d at 108. Before rejecting the Consent Order, the Court of Chancery observed that, "[a]t trial, ***in addition to pointing out Sheffield's possible conflicts and leading role in the merger negotiations***, Plaintiff relied on [the] Consent Order to bolster its bid for emails and texts." *Post-Trial Op.*, 2025 WL 2106580, at *2 (emphasis added). The Chancellor obviously understood that the Consent Order was not Plaintiff's sole basis for seeking Mr. Sheffield's e-mails and text messages. OB at 44. Plaintiff's own misunderstanding of the Court of Chancery's ruling does not render the ruling clearly erroneous.

Regardless of the standard of review, the Court of Chancery correctly determined that the Consent Order did not justify a broader inspection alone or together with Plaintiff's other "evidence." As the Court of Chancery explained, the mere fact that Mr. Sheffield texted about the unrelated issues underlying the Consent Order does not mean he had a "pattern" of concealing information from the Board about the Merger. *Post-Trial Op.*, 2025 WL 2106580, at *4. Plaintiff's only

response to this sound logic is that the Consent Order confirms that Mr. Sheffield sent text messages about "corporate business." OB at 45. Of course he did—Pioneer's productions provide examples. A0746-47 (Stip. ¶¶ 47-48). But that fact alone does not entitle Plaintiff to inspect all of Mr. Sheffield's e-mails and text messages. Because Plaintiff failed to connect the Consent Order to the Merger at all, the Court of Chancery did not clearly err or abuse its discretion by declining to view the Consent Order as a basis for a sweeping inspection of Mr. Sheffield's informal communications. Under any analysis, this Court should affirm the Court of Chancery's scope determination.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Chancery should be affirmed.

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