EFiled: Nov 25 2025 06:04PM EST
Filing ID 77870974
Case Number 368,2025

**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

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

# APPELLANT'S REPLY BRIEF

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## PRELIMINARY STATEMENT

The Court of Chancery held that Plaintiff successfully established a credible basis to investigate possible wrongdoing.[1] Pioneer has not appealed the Court of Chancery's credible basis determination. The primary remaining question is whether the Court of Chancery's scope ruling was an abuse of discretion. It was. Pioneer's arguments to avoid production boil down to two assertions: (i) Plaintiff thinks it deserves access to certain text messages and emails solely because they exist, and (ii) Plaintiff seeks plenary-style discovery. Neither of Pioneer's keystone arguments are structurally sound.

Plaintiff does not and has never taken the position that it is entitled to access the Concealed Communications[2] solely because they exist. Instead, Plaintiff has identified specific reasons to reasonably infer that the Concealed Communications—which Sheffield withheld from the Board—contain evidence of wrongdoing.

Plaintiff seeks what the Court of Chancery credited as a "narrowly circumscribed"[3] set of electronic communications because no other book or record

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[1] Ex. A. to Appellant's Opening Brief ("OB") at 5; *Operating Eng'rs Constr. Indus. & Misc. Pension Fund v. Pioneer Nat. Res. Co.*, 2025 WL 2106580, at *2 (Del. Ch. July 28, 2025) (the "Letter Opinion").

[2] As defined on OB at 1. Unless otherwise stated, this brief uses the defined terms set out in the Appellant's Opening Brief.

[3] Letter Opinion at *4.

will allow Plaintiff to satisfy its proper purpose for which it has established a credible basis—to investigate a fraud on the Board.

The Court of Chancery's scope determination should be overturned, and production of the Concealed Communications should be ordered.

## ARGUMENT

### I. PLAINTIFF ESTABLISHED THAT THE COURT OF CHANCERY ABUSED ITS DISCRETION BY AFFIRMING THE FINAL REPORT'S SCOPE DETERMINATION

#### A. PLAINTIFF DEMONSTRATED THAT PIONEER MUST PRODUCE THE CONCEALED COMMUNICATIONS

Contrary to Pioneer's arguments, Plaintiff has demonstrated a need for an inspection of the Concealed Communications.

Pioneer's answering brief is primarily organized around an oversimplified and inaccurate characterization of Plaintiff's argument. Rather than engage with the substance of Plaintiff's brief, Pioneer's primary assertion—which runs through its brief—is that "Plaintiff argues that it is entitled to inspect Mr. Sheffield's informal communications because those communications exist."[4] That is not true. Plaintiff has never taken that position.[5] The Concealed Communications *do* exist, and their existence is a necessary predicate for a court to order their production. But Plaintiff has never argued that the mere fact that informal communications exist entitles a

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[4] Corrected Appellee's Answering Brief ("AB") at 23.

[5] *See, e.g.*, A1019 (describing many reasons Plaintiff is entitled to the Concealed Communications: "In conclusion, we are entitled to electronic communications here because: One, they exist; two, they were substantive; three, they were withheld from the board; four, the evidence demonstrates a pattern of misconduct by Mr. Sheffield, including by means of electronic communications; and, five, the alleged misconduct (privately undermining Pioneer's negotiating position for his own benefit), can only be unearthed by examining documents that the board never received, the [C]oncealed [C]ommunications.").

stockholder to their production under Section 220. There must be "something more[.]"[6] Here, Plaintiff has identified that something more: Plaintiff has identified "some evidence"[7] that the Concealed Communications are necessary to satisfy Plaintiff's proper purpose of investigating a fraud upon the Board.[8]

Plaintiff supplied this evidence at trial below. For example, Plaintiff demonstrated that Sheffield did not behave like an arms-length negotiator.[9] He undercut Pioneer's negotiating position repeatedly.[10] He withheld the Concealed Communications from the Board.[11] In addition, the highly unusual text messages between Sheffield and Woods that Sheffield *did* provide to the Board showed Sheffield unilaterally anchoring negotiations below the bare minimum premium suggested by Pioneer's financial advisor.[12] Contrary to Pioneer's arguments otherwise,[13] these facts are material because, when combined with the fact that

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[6] A0861.

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

[8] 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").

[9] OB at 35.

[10] *Id.*

[11] *Id.* at 35-36.

[12] *Id.*

[13] AB at 30-32.

Sheffield selectively withheld *some* of his text messages and emails with Woods from the Board, they give rise to a reasonable inference that the Concealed Communications—like the disclosed communications—contain additional evidence of wrongdoing.[14] At no point has Pioneer taken the position that the Board was aware that Sheffield had withheld some of his substantive communications with Woods from the Board before the Board voted to approve the Merger.

Pioneer claims that Plaintiff failed to prove that Pioneer either failed to "honor traditional corporate formalities" or that its "traditional materials, such as board resolutions or minutes" omit key events or materially contradict publicly disclosed information.[15] But the Concealed Communications could never have been included within the Formal Board Materials because the Concealed Communications were concealed from the Board.[16] Moreover, despite a robust investigative dialogue, four defense briefs,[17] a Section 220 trial, exceptions to that Section 220 trial, and an

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[14] OB at 35-66.

[15] *Okla. Firefighters Pension & Ret. Sys. v. Amazon.com, Inc*., 2022 WL 1760618, at *12 (Del. Ch. June 1, 2022); *see also* AB at 23-24 (quoting *Okla Firefighters Pension & Ret. Sys. v. Amazon.com, Inc.*, 2022 WL 1760618 (Del. Ch. June 1, 2022)).

[16] OB at 40-42.

[17] *See id.* at 35 (referencing only three defense briefs; i.e., necessarily not counting Pioneer's most recent brief).

explicit invitation from Plaintiff to do so,[18] Pioneer has never represented that the substance of the admittedly substantive Concealed Communications was communicated to the Board before the Board voted to approve the Merger.[19] Presumably Pioneer has not made that representation because it cannot.

Pioneer argues that the Letter Opinion states that no "key events" were omitted from Pioneer's Formal Board Materials and that Plaintiff failed to identify anything in Pioneer's production suggesting that Sheffield withheld key information from the Board.[20] That is not what the Letter Opinion says; it states that "Plaintiff does not specify what [the] key information might be."[21] Plaintiff respectfully disagrees with the Court of Chancery's decision expressed in the Letter Opinion because Plaintiff definitionally cannot describe with specificity the information that Sheffield withheld from the Board and, by extension, Plaintiff. But, in any event,

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[18] A0910.

[19] On a practical level, Pioneer has long been on notice that all it has had to do to short circuit this dispute—which has now reached this Court—is represent that the Board was aware of all of the substantive information in the Concealed Communications before the Board voted to approve the Merger. OB at 35; *see, e.g.*, A1044 at 47:3-10 ("There is a very easy way to address plaintiff[']s[] concerns; it's to take the content of the [C]oncealed [C]ommunications and cross-reference them with the minutes that the board made -- the minutes of the board's meeting[s] leading up to the merger. If all the information in the [C]oncealed [C]ommunications is in [the] minutes, plaintiff has no problem."); *see also* A0910; A0960-961; A0982-983.

[20] AB at 25, 32.

[21] Letter Opinion at *4.

the Letter Opinion does not affirmatively state that all key events were included in Pioneer's Formal Board Materials, merely that Plaintiff was unable to specify what information might have been excluded. Moreover, as described above, Plaintiff has articulated specific reasons as to why it is reasonable to infer that the Concealed Communications—which Sheffield withheld from the Board—contain evidence of wrongdoing.

Pioneer also suggests that the Letter Opinion did not require Plaintiff to satisfy an impossible task, arguing that in so stating, Plaintiff mischaracterized the decisions below.[22] But Pioneer does not (indeed, cannot) engage with the Court of Chancery's circular ask at the heart of its abuse of discretion here: that Plaintiff must specify what is in certain books and records before their production.[23]

Pioneer's attempt to distinguish *Palantir* falls flat. Pioneer reads *Palantir* to hold that Pioneer should not have to produce Informal Board Materials when it maintains Formal Board Materials on the same subjects.[24] While Pioneer kept traditional Formal Board Materials—and the defendant in *Palantir* did not—here, the Concealed Communications are "the only documentary evidence" of the fraud

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[22] AB at 32.

[23] OB at 37-42.

[24] AB at 26; *Palantir*, 203 A.3d at 756.

upon the Board that Plaintiff has a credible basis to investigate.[25] But information concealed from the Board cannot—by definition—be maintained within Pioneer's Formal Board Materials. Pioneer further argues that a Section 220 proceeding is not intended to provide wide-ranging plenary-style discovery.[26] Plaintiff agrees, which is why Plaintiff has sought and continues to seek a highly targeted production of what it understands to be a very small number of emails and text messages;[27] as the court below put it, "Plaintiff argues that its demand for electronic communications was 'narrowly circumscribed,' and that is a fair description of Plaintiff's request.'"[28]

Pioneer cites this Court's precedent for the proposition that "[t]here is nothing inherently wrong with a Board delegating to a conflicted CEO the task of negotiating a transaction."[29] But the case that Pioneer cites goes on to qualify that statement of law: "[b]ut the conflict must be adequately disclosed to the Board, and the Board

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[25] *Palantir*, 203 A.3d at 758.

[26] AB at 26; 29-30; *Palantir*, 203 A.3d at 755.

[27] Despite ample opportunity, Pioneer has not asserted burden as a defense to production of the Concealed Communications. OB at 34-35. Pioneer has not told Plaintiff how many texts and emails are in the Concealed Communications.

[28] Letter Opinion at *4.

[29] *City of Fort Meyers Gen. Emps.' Pension Fund v. Haley*, 235 A.3d 702, 721 n.69 (Del. 2020); *see also* AB at 27 (qualifying the conflict as alleged). Note, too, Pioneer's admission that the Court of Chancery credited Sheffield's conflict. AB at 27.

must properly oversee and manage the conflict."[30] Here, the Board appears to have attempted to oversee and manage Sheffield's conflicts of interest by reviewing his text message communications with Woods about the Merger.[31] But—apparently unbeknownst to the Board before it voted to approve the Merger—Sheffield did not provide the Board with all of his text messages and emails with Woods (that balance being the Concealed Communications). The Board's attempt to oversee and manage Sheffield's conflicts was therefore not successful because Sheffield kept the Board in the dark about the Concealed Communications. Contrary to Pioneer's argument, this suggests that the Board was not fully informed.[32]

Pioneer relies on the Final Report's conclusion that the Merger did not support "an inference of irrationality such that [it could] or must infer bad faith."[33] From this, Pioneer argues that the Court of Chancery declined to credit an inference that Sheffield "steered a supermajority of independent directors on the Board."[34] But the Senior Magistrate's Final Report's application of the business judgment rule was not

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[30] *Haley*, 235 A.3d at 721 n.69.

[31] This is a reasonable inference because, in a highly unusual development, some of Sheffield's text messages with Woods were included in the Formal Board Materials.

[32] Pioneer claims that Plaintiff does not dispute that the Board was fully informed. AB at 27. Plaintiff does dispute that the Board was fully informed. OB at 17; A0982; A0919-20.

[33] AB at 29; A0856.

[34] AB at 29.

legally correct.[35] Indeed, in reviewing Plaintiff's exceptions to the Final Report, the Court of Chancery concluded that Plaintiff had "met the credible basis requirement[.]"[36]

### B. PIONEER OTHERWISE MISAPPREHENDS THE RECORD

Pioneer suggests that the Federal Trade Commission (the "FTC") reopened and set aside the Consent Order in July 2025 because prior "administrative agency overreach,"[37] had produced allegations about Sheffield's conduct that were supposedly "[in]sufficient to state a claim[,] . . . inappropriate[,] and . . . not in the public interest."[38] The FTC asserts that it found that its underlying complaint, *inter alia*, did not "plead sufficiently a violation of the antitrust laws or provide any reason to believe the acquisition would result in anticompetitive effects[.]" [39] Plaintiff adds two contextual elements to the FTC's action here. First, the FTC reopened and set aside the Consent Order only after the recent change in presidential administrations. Charitably, the FTC's post-presidential-transition action here reflects a substantially more lenient approach to antitrust enforcement. Second, in reopening and setting

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[35] A0913-A0915.

[36] Letter Opinion at *2.

[37] AB at 4-5.

[38] *Id.* at 14.

[39] AB at 14; A1052.

aside the Consent Order, the FTC does not affirmatively dispute that Sheffield sent troubling text messages.[40]

Finally, Pioneer claims that Plaintiff seeks a six-month time period.[41] Plaintiff seeks text messages and emails exchanged between Woods and Sheffield between June 1, 2023 and October 11, 2023 that were not provided to the Board.[42] This is a roughly four-and-a-half month period, not a six-month period—and in any event, because Pioneer has never asserted burden as a defense, Plaintiff understands that there is a very small number of Concealed Communications.

Plaintiff has successfully established that the Court of Chancery abused its discretion by affirming the Final Report's scope determination.

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[40] *See generally* A0147-57.

[41] AB at 22.

[42] OB at 3.

## II. THE COURT OF CHANCERY RESTED ITS CONCLUSION UPON AN INACCURATE FACTUAL PREMISE

Pioneer asserts that the applicable standard of review for Plaintiff's second question presented is clear error.[43] Plaintiff demonstrated that the Court committed clear error by resting its conclusion on 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.

Pioneer asserts, incorrectly, that Plaintiff argued that the Court of Chancery mistakenly understood Plaintiff to seek the Concealed Communications solely because of the Consent Order.[44] Not so. Plaintiff's argument was, and remains, that the Letter Opinion appeared to conclude that Plaintiff had reason to be suspicious of Sheffield's text messages specifically because of the Consent Order, not because of the many other reasons to be suspicious of the content of the Concealed Communications.[45] Pioneer then amplifies the Letter Opinion's misapprehension of the record, asserting that "the mere fact that Mr. Sheffield texted about the unrelated issues underlying the Consent Order does not mean he had a 'pattern' of concealing

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[43] AB at 34. In Plaintiff's Opening Brief, Plaintiff contended that the operative standard was abuse of discretion. OB at 43-47. Under either an abuse of discretion or clear error standard, Plaintiff prevails.

[44] AB at 35.

[45] OB at 43-44.

information from the Board about the Merger."[46] Pioneer again flattens the facts. As discussed above, Plaintiff has identified "some evidence"[47] that the Concealed Communications are the sole book or record Plaintiff could look to in order to satisfy its proper purpose of investigating a fraud upon the Board.

Finally, Pioneer suggests that the fact that the Consent Order is post-demand evidence should count against Plaintiff, but argues that this appeal does not depend upon the pending appeal in *Paramount Global v. State of Rhode Island Office of the General Treasurer ex rel. Employees' Retirement System of Rhode Island*.[48] To the extent that Pioneer seeks to exclude the Consent Order from this Court's consideration on the basis that it is post-demand evidence, its argument is waived because Pioneer did not raise it below.[49] Pioneer has previously referenced the Consent Order as one of several "subsequent developments,"[50] but has never before argued that it should be excluded from judicial consideration because it is post-demand evidence. That argument is thus waived.[51]

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[46] AB at 35.

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

[48] No. 129, 2025 (Del. Mar. 27, 2025).

[49] *See* Supr. Ct. R 8 ("Only questions fairly presented to the trial court may be presented for review …"); *Mammarella v. Evantash*, 93 A.3d 629, 636 (Del. 2014) (finding waived an argument not raised below).

[50] A0941 n.1.

[51] *Mammarella*, 93 A.3d at 636.

Plaintiff has successfully established that the Court of Chancery committed clear error by resting its conclusion on an inaccurate factual premise.

## CONCLUSION

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

Dated: November 25, 2025

**GRANT & EISENHOFER P.A.**

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**Words: 2,633 / 5,500**