



IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEO INVESTMENTS HONG	)	
KONG LIMITED,	)	
	)	
Plaintiff Below,	)	CONSOLIDATED
Appellant/Cross-	)	No. 415, 2025
Appellee,	)	No. 428, 2025
	)	
v.	)	Court Below:
	)	
TOMALES BAY CAPITAL	)	Court of Chancery of the State of
ANDURIL III, L.P., TOMALES	)	Delaware, C.A. No. 2022-0175-JTL
BAY CAPITAL ANDURIL III GP,	)	
LLC, and IQBALJIT KAHLON,	)	
	)	
Defendants Below,	)	
Appellees/Cross-	)	
Appellants.	)	

**APPELLANT’S REPLY BRIEF ON APPEAL AND  
CROSS-APPELLEE’S ANSWERING BRIEF ON CROSS-APPEAL**

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Dated: January 20, 2026

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## PRELIMINARY STATEMENT

This case is about a viable investment that Defendants' misconduct took to the brink of a Fund material adverse effect ("MAE") in just days. As Leo explained, and the trial court squarely found, the problem began as a result of Kahlon failing to tell SpaceX in advance (as he knew to do) that the Fund had a new investor that needed to make legally required disclosures in China. When SpaceX learned of the disclosure on its own, Kahlon lied to SpaceX and blamed Leo for making a disclosure he contractually agreed it could make.

As Leo's opening brief explained, the trial court should have found as a matter of law that this misconduct rebutted the business judgment rule. Instead, the trial court focused on Kahlon's *reaction* to the problem *he created*, which Defendants concede was grave enough to threaten an MAE.

Leo also showed that the trial court wrongly placed on Leo the burden to prove what would have happened absent Defendants' misconduct. Correcting these errors requires a different outcome. Defendants cannot satisfy their entire fairness burden, one heightened to clear and convincing evidence due to spoliation.

Defendants' response both says too much and too little. They first claim that Kahlon's disloyal lies to SpaceX are not actionable because he told those lies to a third party. The assertion that lies to third parties are categorically non-actionable

fails under Delaware law, which is replete with authority confirming that third party-directed misconduct can establish fiduciary liability.

Defendants newly suggest that their lies didn't matter because the investment never was viable in the first place. That causation argument, woven throughout their brief, has no bearing on whether the conduct described by the trial court rebutted the business judgment rule as a matter of law. This Court's precedent instructs as much. Defendants altogether duck this legal issue.

Moreover, this non-viability argument is *precisely the opposite* of what Defendants told the trial court and what it found. Specifically, Defendants described the investment as “viable” in their post-trial brief. And the trial court rightly concluded that Kahlon “did not anticipate any problems with Leo Group’s investment,” as supported by myriad other record evidence too, including that: (i) SpaceX had “always permitted legally required disclosures”; (ii) “many investors have disclosed their investments in SpaceX, including Kahlon himself”; and (iii) Kahlon had previously “taken on investors from China.” Ex.A\_p.5, 16. Indeed, Kahlon testified that he was “confident” everything would have worked out if there had not been a “dispute” about Leo’s disclosure—a dispute he conjured out of thin air by lying to SpaceX about the disclosure-permitting side agreement to blame Leo and protect himself.

Defendants' contortion of the facts found by the trial court does not end there. They now accuse Leo of engaging in unauthorized publicity, ignoring that the post-trial opinion contains fact findings squarely rejecting their arguments. *E.g.*, Ex.A\_p.19 ("Kahlon and the Fund had agreed to the disclosure that Leo Group made."); Ex.A\_p.19 ("Leo Group did not seek to publicize any information beyond the agreed-upon scope.").

Plaintiff rebutted the business judgment rule. Defendants had to prove their conduct was entirely fair by clear and convincing evidence. They came nowhere close.

Defendants fare no better on the other issues raised. Leo, at minimum, is entitled to reversal insofar as the parties' subscription agreement required litigation in Delaware of claims "relating in any way" to the parties' agreements. A.784. This required Defendants to file their wasteful, overlapping, and duplicative California claim (filed against Leo Group for purportedly engaging in a wrongful publicity campaign) in Delaware. Defendants filed those claims just before the Delaware trial and continue to pursue them notwithstanding the trial court's fact findings.

As for Defendants' cross-appeal challenge to the trial court's duty of candor finding regarding their lies to Leo, the trial court's conclusion is well supported. For example, Kahlon testified that one of his communications to Leo was

“bullshit.” The trial court’s conclusion that this and other of Defendants’ false statements supported a candor claim is rock solid.

Finally, Defendants challenge the fee-shifting award by suggesting that the trial court was foreclosed from providing an equitable remedy for a breach of the duty of loyalty, and that their conduct just wasn’t that bad. Yet, the Court of Chancery had the discretion to fashion an equitable remedy in light of its scathing fact-finding about Defendants’ extreme conduct. The record fully supports fee shifting here in light of the trial court’s findings that the manager of a multi-billion dollar fund repeatedly lied to and about his beneficiary.

For all of these reasons, this Court should reverse on liability and the application of the Forum Selection Clause and deny Defendants’ cross-appeal.

## REPLY ARGUMENTS ON APPEAL

### **I. Leo Rebutted the Business Judgment Rule, and Defendants Could Not Prove Entire Fairness by Clear and Convincing Evidence.**

Leo showed that Kahlon's self-interested lies, omissions, and otherwise grossly negligent conduct rebutted the business judgment rule and that Defendants did not meet their entire fairness burden. *See, e.g.*, Br.31-32, 37. As the trial court found, and Defendants do not seriously contest:

- (i) Kahlon created the problem (SpaceX's ire about Leo's investment in the Fund) by failing to give SpaceX advance notice of Leo's expected, mandated disclosures and then falsely blamed Leo to protect himself when SpaceX noticed them, Ex.A\_p.58;
- (ii) Kahlon's lies ultimately caused SpaceX to baselessly view Leo as a bad actor that it did not want as part of the Fund's investment, Ex.A\_p.58; and
- (iii) Kahlon therefore created a problem so serious that it was reasonably likely to constitute an MAE or to cause a significant and adverse delay on the activities of the Fund, Ex.A\_p.74, 77-79.

That was enough to rebut the business judgment rule and prevent Defendants from meeting their entire fairness burden.

The trial court, however, held none of these actions violated the business judgment rule or mattered for entire fairness review because, after creating the problem, Kahlon remedied the MAE by invoking LPA provisions to force Leo out of the Fund. Ex.A\_p.64-65. The court found Kahlon's reaction proper because SpaceX's ire threatened either a reasonably likely Fund MAE or "significant and adverse delay." Ex.A\_p.77-78. As Leo explained, the trial court's focus on

Kahlon's post-November 19 execution of the Forced Withdrawal, rather than his creation of the problem, was error. Br.28-31.

The trial court also committed a second, related error by placing the burden of proving causation (*i.e.*, what would have happened but for Defendants' misconduct) on Leo, when this Court's precedent instructs that Defendants shoulder that burden under the entire fairness standard. Correction of these errors mandates reversal.

Defendants' response is extreme. First, they claim that the business judgment rule was not rebutted because (i) as a matter of law, a fiduciary can tell harmful lies to third parties, even about their beneficiaries, without consequence because no duty is owed to that third party, TBC-Br.27, and (ii) Kahlon's frivolous understanding of the parties' agreements and failure to engage in advance with SpaceX (as he knew to do) fell short of gross negligence, TBC-Br.24-25.

Next, Leo showed that it did not bear the burden to prove causation in order to rebut the business judgment rule. But Defendants ignore Leo's showing that the trial court committed a further legal error by placing that burden on Leo as part of its business judgment rule analysis. This omission alone is a sufficient basis for reversal. To try to salvage the court's error, Defendants offer a more aggressive version of their causation narrative, now claiming—in an about-face from their post-trial brief—that their misconduct did not matter because Leo's investment

was not viable from inception. TBC-Br.24, 27-29. This flies in the face of the trial court's findings and would be wrong irrespective of the standard of review.

Regardless, the point only warrants treatment when assessing whether Defendants met their entire fairness burden (as opposed to whether Plaintiff rebutted the business judgment rule).

Finally, Defendants fail to defend the trial court's flawed entire fairness analysis. They offer nothing beyond their new and incorrect the-investment-was-never-viable spin on causation. The record and the trial court's blistering fact findings underscore that, had the trial court properly allocated the burden of causation, Defendants could not have satisfied their entire fairness burden by clear and convincing evidence.

A. Kahlon's self-interested lies to SpaceX rebutted the business judgment rule.

Leo showed that, as the trial court found, Kahlon's lies to SpaceX created the very problem for the Fund that he attempted to resolve by ousting Leo and that those lies were inherently disloyal. Br.37.

Defendants rightly do not contest the premise generally. Instead, they make the audacious legal claim (far beyond anything the trial court said) that they cannot be liable for Kahlon's blatant lies to SpaceX, because they "owed no fiduciary duties to SpaceX." TBC-Br.27. To Defendants, a fiduciary's lies or misconduct directed at a third party are never actionable, *even if those lies are about—and*

*harm—one’s beneficiaries.* TBC-Br.27 (contending that “Leo’s cited authorities for its assertion that ‘[l]ies are inherently disloyal’ are *inapposite* because the defendant in those cases owed a fiduciary duty to those to whom the defendant allegedly made misrepresentations or withheld information” (emphasis added)); TBC-Br.36 (asserting that “Kahlon’s letter to SpaceX” that the Court found to contain misrepresentations “is *irrelevant* to any fiduciary duty applicable here” (emphasis added)). In other words, Defendants ask this Court to conclude that a fiduciary can lie blatantly and repeatedly so as long as those lies are not made *to* a beneficiary. TBC-Br.36.

This bizarre proposition lacks support in Delaware law. This Court has repeatedly and often found misconduct in one’s fiduciary capacity directed at a third party to be actionable across a variety of circumstances.

For example, this Court has repeatedly found fiduciaries liable for tilting the sales process in favor of one bidder over another. *See, e.g., In re Mindbody, Inc. S’holder Litig.*, 332 A.3d 349, 356 (Del. 2024) (“Stollmeyer breached his fiduciary duty of loyalty under *Revlon* by having disabling conflicts and tilting the sale process in Vista’s favor for his own personal interests.”); *Gantler v. Stephens*, 965 A.2d 695, 707 (Del. 2009) (purposefully withholding necessary due diligence from bidder because of “personal financial interest” is “act[ing] disloyally”).

Delaware courts have also found fiduciaries liable for knowingly making false statements to potential investors and accountants. *See Paron Cap. Mgmt., LLC v. Crombie*, 2012 WL 2045857, at \*7-8 & n.25 (Del. Ch. May 22, 2012) (finding LLC manager breached duty of loyalty by preparing fraudulent marketing materials and concealing information, including from third-party potential investors, an accounting firm, and regulators, because “a director will breach his fiduciary duty of loyalty where he knowingly disseminates false information that results in corporate injury or damage to an individual stockholder” (cleaned up) (quoting *Malone v. Brincat*, 722 A.2d 5, 9 (Del. 1998))), *aff’d* 62 A.3d 1223 (Del. 2013) (TABLE).

And Delaware courts have found fiduciaries liable for wrongfully sharing corporate information with third parties. *Metro Storage Int’l LLC v. Harron*, 275 A.3d 810, 854-56 (Del. Ch. 2022) (concluding Harron “breached his duty of loyalty” where he disclosed the companies’ confidential information to third parties, “knew the information was confidential,” and “shared it anyway because he was working as a consultant for Gouveia”).

Defendants’ extreme and dangerous theory that harmful lies directed at a third party are beyond the reach of a fiduciary claim fails.

To the extent Defendants suggest that Kahlon’s lies were consistent with the Fund’s interest, Br.16-17, that is nonsense. The lies, by their own account,

implicated an MAE, which obviously was not in the Fund's interest. To the extent that Defendants are contending that it was in the Fund's interest to try to repair Kahlon's self-inflicted wound, as the court found in addressing the termination provision, that still does not speak to the relevant period.

Kahlon's self-interested lies to SpaceX were a disloyal act that rebutted the business judgment rule, whether or not Defendants owed duties to SpaceX.

B. Kahlon's gross negligence rebutted the business judgment rule.

As Leo showed, the trial court's gross negligence analysis focused almost exclusively on Kahlon's reaction to the problem he created, *i.e.*, his decision to implement the Forced Withdrawal. Br.32. Leo showed that the trial court's causation-free findings constituted gross negligence that rebutted the business judgment rule. *Id.* ("Kahlon was to blame for not going to Johnsen earlier" and for "hid[ing] his own responsibility by failing to mention the Side Letter and Exhibit A." (quoting Ex.A\_p.57)).

Defendants say that "the press coverage about Leo Group's involvement would exist regardless." TBC-Br.24 (cleaned up) (quoting Ex.A\_p.57). This causation argument has no bearing on whether Plaintiff rebutted the business judgment rule and at most warrants consideration when assessing Defendants' entire fairness burden. *See infra* Appeal Reply §§I.C-D.

Defendants otherwise brush aside Kahlon’s expletive-laden shock that Leo disclosed its investment two days after he agreed that they could do so by essentially admitting that—as the trial court found—he did not understand the parties’ agreements. *See* A.416\_p.371:17-20 (Kahlon admitting that he didn’t understand the parties’ agreement). Indeed, the trial court had expressly found that Defendants’ supposed understanding of the parties’ agreement regarding disclosure, which Kahlon harbored in real time, was “so unreasonable as to be frivolous.” A.886-87\_¶6. The court rightly found it “[s]trange” that, “despite having been directly involved in negotiating the Side Letter, agreeing to Leo Group’s intended public disclosure in Exhibit A, and participating in discussions about its contents with Gulf Asia and Kirkland, Kahlon somehow did not think that a disclosure by Leo Group was imminent.” Ex.A\_p.17. Additionally, Defendants’ expert regarding the regulatory disclosure process in China agreed that a necessary disclosure would need to be made “immediately,” *i.e.*, “within two trading days.” A.505\_p.613:13-21. Thus, Kahlon’s grossly negligent understanding of the contracts he signed is far from “irrelevant,” as Defendants assert. TBC-Br.25. Rather, these facts reflect gross negligence sufficient to rebut the business judgment rule.

Defendants also contend that that “Leo repeatedly argues that Kahlon breached the duty of care,” even though Kahlon “does not owe a duty of care.”

TBC-Br.24 n.4. This misleading framing ignores that Kahlon is the General Partner's sole decision-maker and all agree the General Partner owes a duty of care. Kahlon's lack of care *is* the General Partner's lack of care, so it makes sense to discuss *Kahlon's* gross negligence in that context (as the trial court did). *See, e.g.,* Ex.A\_p.54, 59 (asserting that "Leo Group did not show that Kahlon breached his duty of care," even after holding *sua sponte* that "[o]nly the General Partner owed a duty of care"). Furthermore, as for Kahlon's personal liability for the breach of the duty of care: Defendants never made this argument in their post-trial brief below and therefore waived it. *See Oxbow Carbon & Mins. Hldgs., Inc. v. Crestview-Oxbow Acq., LLC*, 202 A.3d 482, 502 n.77 (Del. 2019) ("[A]n issue not raised in post-trial briefing has been waived.").

C. The trial court erred by requiring Leo to prove causation in evaluating whether Leo had rebutted the business judgment rule.

Leo did not need to prove causation to rebut the business judgment rule. The trial court, however, erred in concluding that Leo had not rebutted the business judgment rule solely due to a causation problem. *See* Br.44-45 (quoting *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 371 (Del. 1993)). Specifically, the trial court concluded that even had Kahlon been honest with SpaceX once confronted, "Leo Group did not make a convincing case that sharing that information would have changed Johnsen's mind." Ex.A\_p.57; *see also* TBC-Br.24 (adopting the court's conclusion that honesty "would have made no difference").

But requiring a plaintiff “to prove a proximate cause relationship between the [fiduciary’s] presumed breach of its duty of care and the shareholder’s resultant loss,” like the trial court did here, “is contrary to well-established Delaware precedent.” *Cede*, 634 A.2d at 367 (emphasis omitted). Defendants ignore this legal error. They do not cite *Cede* or otherwise address the point, wholly waiving the issue, despite that this causation error is a standalone basis for reversal.

D. Defendants did not meet their burden to prove entire fairness by clear and convincing evidence.

Because Leo rebutted the business judgment rule, the burden should have shifted to Defendants to prove that their actions were entirely fair by clear and convincing evidence. Br.40.<sup>1</sup> The trial court conducted this analysis in the alternative, without ever mentioning Defendants’ heightened burden. But, as Leo showed, the court erroneously (1) placed the causation burden on Leo rather than Defendants and (2) relatedly omitted consideration of Kahlon’s problem-causing conduct before November 19, 2021. *See* Br.40-45.<sup>2</sup> Once the burden is properly

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<sup>1</sup> *See* Ex.A\_p.2 (finding spoliation and, “[a]s a sanction, the court increased Kahlon’s burden of proof from a preponderance of the evidence to clear and convincing evidence” (citing A.199)).

<sup>2</sup> Defendants contest Leo’s characterization of the court’s analysis as “truncated” merely because the entire fairness section of the opinion was “almost seven pages,” TBC-Br.31, but that is misleading. While the section was nearly seven pages, the court’s analysis was merely three *paragraphs*, less than a page, and only considered Defendant’s invocation of the Withdrawal Provision. Ex.A\_p.64-65.

allocated to Defendants and the full scope of their conduct is taken into account, Defendants could not have proven entire fairness.

Defendants' cursory entire fairness argument on appeal does nothing to actually support that they have met their burden. *See* TBC-Br.31-32. They offer: (i) the newfound notion, counter to their trial presentation, that the investment was not viable and (ii) the unsubstantiated suggestion that the court considered the earlier period (it did not). With these brushed aside, no substance remains. The trial court's findings leave no doubt that Defendants could not establish entire fairness. Kahlon's misconduct took a viable investment to the brink of an MAE in just days. Ex.A\_p.78. That is not entirely fair.

- 1. Defendants' new causation theory that the investment was not viable defies their own statements below, common sense, and the trial court record and post-trial fact findings.*

Rather than address the law regarding their causation burden (*supra* Appeal Reply §I.C), or confront that Kahlon's misconduct took the investment from viable to a likely MAE, Defendants now say that none of Kahlon's conduct mattered because Leo's investment was not viable from the jump. TBC-Br.24, 27-29. Defendants argued no such thing below. Instead, all parties agreed that the investment, including with the disclosures permitted by the Side Letter, was viable.

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The section largely details uncontroversial law regarding the entire fairness standard, but none of that discussion was material to the court's conclusions.

For example, Defendants’ post-trial brief explicitly described the investment as “viable” and explained that was why Kahlon admitted Leo in the first place. A.643 (“Based on his long-time collaboration with SpaceX, Kahlon determined that bringing on Leo Group, a Chinese public company, as an indirect investor *was viable*, provided there was proper structuring.” (emphasis added) (citation omitted)).

Despite now contesting the accuracy of Leo’s contention that “[a]ll the evidence and facts found by the trial court demonstrate that, absent Kahlon’s breaches, Leo’s investment would have gone forward,” TBC-Br.31 (quoting Br.42), Defendants do not actually cite anything contradicting their prior description of the investment as “viable.”<sup>3</sup> By contrast, in addition to Defendants’ viability concession below, Leo provided ample causation proof (Br.42-43), citing:

- Kahlon’s admission that he was “confident” things would have worked out with SpaceX absent the “dispute over the propriety of Leo Group’s announcement,” which *Kahlon created* through his lies about Leo’s agreed disclosure and frivolous understanding of the parties’ agreements, A.402\_p.315:8-13; and
- the trial court’s finding that SpaceX “ha[d] always permitted legally required disclosures” and therefore “many investors have disclosed their investments in SpaceX, including Kahlon himself,” Ex.A\_p.5 & n.18 (citing examples).

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<sup>3</sup> Defendants’ cite for this point is an internal cross-reference to two seemingly irrelevant pages of their cross-appeal concerning disclosure-related case law. TBC-Br.31 (citing 33-34).

*See also, e.g., Ex.A\_p.16* (“Kahlon believed that having Leo Group as an indirect investor would be acceptable. He had taken on investors from China and knew other intermediaries that had done the same.”); *id.* at 17 (“Evidencing his lack of concern about Leo Group’s involvement, Kahlon used the investment to solicit other Chinese investors.”). Defendants’ argument that none of Kahlon’s misconduct mattered blinks reality.

Consistent with Defendants’ attempt to flip the script on the trial court’s findings and what was uncontested below, their brief now spins a slanted tale of publicity related to Leo’s agreed-upon disclosure. TBC-Br.10-12. Defendants blame everything on Leo and try to avoid causal responsibility. *See, e.g., TBC-Br.18, 24.* The problem is the trial court rejected *all* of Defendants’ arguments on this point. Indeed, contrary to Defendants’ “Leo’s-publicity-created-the-problem” narrative, the trial court specifically found that “Kahlon and the Fund had agreed to the disclosure that Leo Group made”; that “Leo Group did not seek to publicize any information beyond the agreed-upon scope”; that its publicity was “spare”; and that it only “did what it bargained for the right to do.” *Ex.A\_p.19-21.* After rejecting Defendants’ publicity theory, the trial court found that *Kahlon* “created” the problem in question with SpaceX. *Ex.A\_p.57-58.* As the trial court put it, Kahlon “let Leo Group take the fall when they were blameless, and he did not

reveal his own involvement or take responsibility for the problem he created.” *Id.* Defendants come nowhere close to showing these findings were clear error.

Defendants argue that if Kahlon had been honest once confronted by SpaceX, there was still “a very substantial risk that SpaceX would have refused to allow Kahlon to purchase *any* SpaceX shares.” TBC-Br.27-28 (citing Ex.A\_p.57). This is flawed. First, Defendants erroneously offer this contention as part of arguing whether the business judgment rule was rebutted. *But see supra* Appeal Reply §I.C. Second, this quote reflects both of the trial court’s legal errors: It is part of the trial court’s erroneous discussion that Leo did not satisfy a purported causation burden, which should have been Defendants’ burden. *See* Ex.A\_p.57 (“But *Leo Group* did not make a convincing case that sharing that information would have changed Johnsen’s mind.” (emphasis added)). And it also focuses on what Kahlon *might* have done *once confronted*, ignoring the earlier period and that there never should have been a confrontation in the first place. *See* Ex.A\_p.57 (“Kahlon was to blame for not going to Johnsen earlier.”). Fixing these errors, and weighing this supposition about Kahlon’s actions against the trial court’s findings through a clear and convincing lens—*e.g.*, Ex.A\_p.5 (finding that SpaceX “has always permitted legally required disclosures”)—leaves no doubt Defendants fell short on causation.

Defendants otherwise suggest that Leo’s entire fairness argument somehow “contradicts its prior arguments” because Leo pointed out that the trial court’s factual findings did not align with its legal analysis. TBC-Br.31. Their argument is wrong. The court made stark factual findings about Kahlon’s misconduct but then failed to consider those actions when *applying* the legal standard. Pointing out the difference in treatment is not a contradiction.

Defendants had to prove by clear and convincing evidence that their conduct was entirely fair. They failed to prove that the investment was not viable (they conceded otherwise) and would not have proceeded absent Kahlon’s misconduct.

2. *Defendants could not have met their entire fairness burden.*

Defendants additionally say *nothing* on appeal to demonstrate how they could have met their entire fairness burden. The trial court’s devastating fact findings regarding Kahlon’s disloyal and grossly negligent decision-making process in engaging with SpaceX speaks for itself. As for price, Defendants ignore that the Fund ultimately purchased shares at \$70/share rather than the planned \$56/share.<sup>4</sup> Br.43-44. Although the trial court recognized this in its fact finding, it

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<sup>4</sup> SpaceX’s potential valuation has recently doubled, with the company offering \$421 per share to eligible shareholders in anticipation of an IPO. Joey Roulette & Gursimrankaur Mehar, *SpaceX insider share sale sets \$800 billion valuation amid possible IPO, letter shows*, REUTERS (Dec. 13, 2025), <https://www.reuters.com/business/spacex-sets-800-billion-valuation-bloomberg-news-reports-2025-12-13/>.

likewise omitted this fact from its analysis. *See* Ex.A\_p.64-65. And, of course, Kahlon's actions resulted in Leo being completely removed from the Fund. The trial court's finding that SpaceX's reaction to Kahlon's mishandling of the situation ultimately rose to the level of a reasonably likely MAE or "significant and adverse delay" for the Fund, *see* Ex.A\_p.78, should have left no path for concluding that Defendants satisfied their clear and convincing entire fairness burden.

\* \* \*

As Leo explained (and Defendants ignored), this case is not about a fund manager who, through no fault of his own, was put in the tough position of choosing between protecting a minority investor or the entity as a whole when facing a potential MAE. This case is about a fund manager who created his own purported conundrum due to brazen misconduct: (i) self-interested lies designed to protect his own lucrative relationship with SpaceX coupled with (ii) a grossly negligent, frivolous understanding of the parties' agreements. Kahlon's self-interested lies and gross negligence created the problem (*i.e.*, a reasonably likely MAE or significant and adverse delay for the Fund), rebutted the business judgment rule, and could not satisfy the entire fairness standard. This court should reverse.

## **II. Defendants Failed to Undermine Leo's Showing that Defendants Violated the Subscription Agreement's Forum Selection and Jury Trial Waiver Clauses.**

As Leo showed, the trial court's reading of the forum selection provision creates surplusage. Br.47. If the entire provision only applies to the Subscriber, the first clause covering suits "against the General Partner or the Management Company (or their [affiliates]) or the Partnership" covers all manner of suits by the Subscriber relating to the Subscription Documents without the need for the second clause. *See* A.784. Defendants only muster in response that "[t]here *could* be cases by a subscriber against other parties besides the Fund, GP, or affiliates that still relate to the Subscription Documents." TBC-Br.59 (emphasis added). But they fail to posit a single example.

Leo's interpretation gives full meaning to both clauses and more naturally follows the structure of the sentence: The Subscriber must bring *any* suit against the General Partner (and enumerated others) in Delaware, regardless of whether the suit is about the Subscription Documents. Any party to the contract suing about the Subscription Documents, however, must bring that suit in Delaware, but the General Partner need not sue the Subscriber in Delaware for causes of action unrelated to those documents.

Defendants' invocation of the rest of the provision only proves the point. They invoke clauses in which "the Subscriber irrevocably submits to the

non-exclusive jurisdiction” of the Delaware courts and “irrevocably waives ... any objection ... to the laying of venue” here and “any claim that” they are “an inconvenient forum.” TBC-Br.59-60 (cleaned up) (quoting A.784-85).

Defendants posit that these clauses show that “it is the Subscriber who is bound by [the forum-selection clause], not Defendants.” TBC-Br.60.

Not so. These clauses support Leo’s reading of the forum selection clause. If only the Subscriber were bound to bring suit in Delaware, there would be no need for the Subscriber to preemptively waive jurisdiction, venue, and *forum non conveniens*. Those are each waivable *defenses* potentially raised by *defendants*. See *Sloan v. Segal*, 2008 WL 81513, at \*7 (Del. Ch. Jan. 3, 2008) (“The affirmative *defense* of personal jurisdiction, as well as the affirmative *defense* of improper venue, is waived by a respondent if it is not [timely] raised.” (citing *Plummer v. Sherman*, 861 A.2d 1238, 1243-44 (Del. 2004)) (emphases added)); *Martinez v. E.I. DuPont de Nemours & Co.*, 86 A.3d 1102, 1104 (Del. 2014), *as revised* (Mar. 4, 2014) (“[T]o prevail under the *forum non conveniens* doctrine, a *defendant* must meet the high burden of showing that ... the *defendant* will face ‘overwhelming hardship’ if the lawsuit proceeds in Delaware.” (emphases added)). These additional clauses only show that the Subscriber may be a *defendant* in Delaware courts, contradicting any reading of the clause that only requires it to be a *plaintiff*.

Defendants have no answer to their violation of the jury-trial clause, only that Leo waived the argument. TBC-Br.60. But this clause is in the exact same paragraph as the forum-selection clause, and the two go hand-in-hand. They work together, and there is no other reading of the jury-trial clause except Leo's. It expressly says that both "[t]he subscriber *and the General Partner* ... irrevocably waive ... any right to a jury trial in connection with any action or proceeding *by or against* the General Partner." A.785 (emphases added). Defendants' argument that the jury waiver "relates only to actions brought by a subscriber," TBC-Br.60, is hollow given the clause plainly says "any action or proceeding *by or against* the General Partner." A.785 (emphasis added).

**SUMMARY OF ARGUMENTS IN RESPONSE TO DEFENDANTS’  
CROSS-APPEAL**<sup>5</sup>

2. Denied. Preliminarily, Defendants told this Court that they were not appealing from the Court’s post-trial opinion, but were challenging only the subsequent fees decision. *See* Cross-Appellants’ Opp. to Mot. for Consolidation ¶¶11-12 (explaining that their appeal would “address legal questions directed at the equities of granting Leo an 8-figure attorneys’ fees award”); Cross-Appellants’ Notice of Appeal (choosing to omit the post-trial order). Defendants have expressly waived any appeal of the trial court’s finding post-trial that they violated the duty of candor.

Regardless, Defendants failed to upset the Court of Chancery’s finding that they breached their duty of candor. They try to wriggle out of the court’s finding by making excuses for Kahlon’s parade of lies to Leo. Disregarding the clear factual findings of the court below, Defendants pluck pieces of the record to claim that, although Kahlon was dishonest, he didn’t lie at certain times or to the right people for the lies to be actionable. Defendants also attempt to resurrect their interpretation of the unambiguous Side Letter, to claim that Kahlon had not actually hidden anything from SpaceX, and so he could not have falsely implied to

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<sup>5</sup> For the Court’s convenience, the numbers below match those used in Defendants-Appellees/Cross-Appellants’ brief. Those numbers, however, do not align with those used in Plaintiff-Appellant/Cross-Appellee’s opening brief.

Leo that SpaceX was fully informed. The Court of Chancery quickly disposed of their reading of the Side Letter at summary judgment, finding it “so unreasonable as to be frivolous,” A.886-87\_¶6, and Defendants never identified it in their Notice of Appeal or as a separate issue on appeal.

Finally, Defendants claim that, even had Kahlon lied (he did), those lies were immaterial because SpaceX’s CFO Bret Johnsen made up his mind solely based on the media coverage of the investment. TBC-Br.35-39. As explained above, that is not what the court found or what the facts showed. *See supra* Appeal Reply §I.D.1. Kahlon’s face-saving, self-interested lies about Leo ensured Johnsen’s hostility to Leo and its investment.

3. Denied. The Court of Chancery, acting in equity, appropriately granted Leo its reasonable attorneys’ fees and costs. The facts of this case mirror *William Penn Partnership v. Saliba* and the award of fees serves the same purpose—it discourages fiduciaries from acting dishonestly in their own self-interest to the detriment of the beneficiaries to whom they owe duties. Kahlon’s actions were egregious, and the Court of Chancery appropriately granted Leo’s fees.

**COUNTERSTATEMENT OF FACTS RELATED TO**  
**DEFENDANTS' CROSS-APPEAL**

**I. Kahlon Repeatedly and Purposefully Lied to Leo.**

As Leo's opening brief showed, and the trial court found, Kahlon repeatedly, rampantly, and intentionally lied to Leo during the course of their fiduciary relationship.

In late 2021, Leo and Kahlon negotiated over whether Leo would invest in the Fund, which would in turn invest in SpaceX. Ex.A\_p.8-9. These negotiations involved discussions about Leo Group's regulatory disclosure obligations. The parties entered into a Side Letter regarding the disclosure, which appended a draft document specifically outlining the planned announcement. Ex.A\_p.9-15.

Notwithstanding his knowledge of SpaceX's preference that he do so, Kahlon did not share the fact of the Side Letter or the agreed-upon regulatory disclosure with SpaceX's CFO. Ex.A\_p.17.

The day after Leo Investments became a limited partner, Leo filed the agreed-upon and required-by-law regulatory disclosure with the Shenzhen Stock Exchange, and the Chinese media quickly caught wind. Ex.A\_p.18. Despite having signed the Side Letter just the day before, Kahlon lost it. Ex.A\_p.20 & n.92 (quoting A.847-48). Concerned with "his own relationship with SpaceX," Ex.A\_p.22, Kahlon tried to manipulate the situation to save his own skin: He asked Leo to get the articles addressing Leo's regulatory disclosure of the

investment removed so that SpaceX would not find out, while actively concealing from SpaceX the contractually agreed-upon disclosure. Ex.A\_p.21. Nevertheless, Johnsen saw one of the articles, learned of the disclosure, and raised his concern to Kahlon. Ex.A\_p.22-23.

In responding to Johnsen, Kahlon blatantly lied about Leo, his beneficiary. Ex.A\_p.23-24. As the trial court found, Kahlon: “did not tell Johnsen that the disclosure was legally required”; “did not mention that he knew about the disclosure and authorized it in advance”; “did not recount the four days spent on hammering out disclosure terms, the Side Letter, or the agreed-upon disclosure documented in Exhibit A”; “did not explain that Leo Group’s announcement faithfully tracked the agreed-upon disclosure”; and instead “blamed the media attention on Leo Group.” Ex.A\_p.23-24. This left Johnsen “uninformed and misinformed.” Ex.A\_p.69. Kahlon concluded after this call that the Fund would not be permitted to invest if Leo remained a partner. Ex.A\_p.24-25.

Kahlon soon after created a “game plan” outlining “exactly” what “to communicate with [L]eo,” namely more lies. A.858 (Kahlon’s contemporaneous text messages); *see also* Ex.A\_p.25 (finding that Kahlon created a “communication plan” to “tell[] Leo Group that the Fund could not invest in SpaceX unless he removed Leo Group from the Fund.”). Kahlon later admitted that this was “basically bullshit written to make [Leo] feel better.” Ex.A\_p.26 (quoting

A.422\_p.395:4-12). Kahlon’s “bullshit” message to Leo was riddled with lies: He would tell Leo that the issue stemmed from a “cultural gap” where Kahlon supposedly did not “realiz[e] how disclosures to regulators end up in a public forum”; that “[w]ith SpaceX, no investor ever comments or releases information on any financing”; and that “[w]e have never announced that we are invested in SpaceX or ever been in the press concerning SpaceX.” Ex.A\_p.26 (quoting A.859). As the trial court held, “[t]hose statements were not true.” Ex.A\_p.26.

Kahlon then sent Leo a proposed letter agreement in which he sought Leo’s consent to an ongoing confidentiality obligation and admission that Leo’s removal from the Fund was necessary. Ex.A\_p.28. As the trial court held, this letter also contained falsehoods: It contained “conflicting accounts” compared to one sent to SpaceX and was not “accurate.” Ex.A\_p.69. Kahlon also admitted that parts of this letter were “bullshit” and “untrue.” A.423\_p.397:1-11 (“[I]f you look at the letter we sent . . . I had zero intention of ever cooperating with them. So yes, you could call it bullshit.”); *see also* A.426\_p.409:8-17.

## **II. The Court of Chancery Properly Exercised Its Discretion to Award Leo Its Reasonable Attorneys’ Fees and Costs Based on Kahlon’s Disloyal Conduct.**

The court’s post-trial opinion held that Kahlon breached his fiduciary duty of candor by “speaking falsely and partially” to Leo. Ex.A\_p.69. It found that Kahlon crafted a plan that was “basically bullshit written to make [Leo] feel better

so they would do what was the right thing to do” (Ex.A\_p.26 (quoting A.422\_p.395:10-12)), that “Kahlon sent letters to Leo Group and SpaceX that contained conflicting accounts, neither of which was accurate” (Ex.A\_p.69), and that, “in their discussions with Leo Group, Kahlon and Gulf Asia depicted Johnsen’s reaction as capricious and concealed that he was both uninformed and misinformed” (Ex.A\_p.69). However, the court concluded that Leo had not proved that this breach led “to any meaningful loss” for Leo or “benefit” for Kahlon. Ex.A\_p.1.

The Court did find that Kahlon’s repeated lies to Leo permeated the case and justified awarding Leo its “reasonable attorneys’ fees and expenses” in equity and to support the public policy of “discouraging fiduciary breach.” Ex.B\_p.3, 5 (citing *William Penn P’ship v. Saliba*, 13 A.3d 749, 758-59 (Del. 2011)). Kahlon’s spoliation and repeated, unabashed non-credible testimony at trial only bolstered that conclusion. Ex.B\_p.3, 5. Accordingly, the Court of Chancery ordered Kahlon to pay Leo’s fees and expenses, plus any post-judgment interest. Ex.C\_¶7. Defendants posted a \$17.4 million bond (fee award plus twelve months of interest), Del. Ch. Dkt. 300, which stayed the order pending appeal, Ex.C\_¶8.

## ARGUMENTS ON CROSS-APPEAL

### **I. The Court of Chancery Correctly Concluded that Defendants Violated Their Duty of Loyalty (Referred to as the “Duty of Candor”) through Disloyal Lies to Leo.**

#### A. Question Presented

Whether the trial court correctly found that Kahlon’s repeated lies to Leo, a beneficiary of Defendants’ fiduciary duties, breached Defendants’ duty of loyalty.<sup>6</sup>

#### B. Scope of Review

Following a bench trial, this Court “reviews the Court of Chancery’s legal conclusions *de novo* but defers to the Court of Chancery’s factual findings supported by the record.” *Coster v. UIP Cos., Inc.*, 300 A.3d 656, 663 (Del. 2023). This Court will not disturb factual findings unless “clearly wrong and the doing of justice requires their overturn.” *Id.* (citation omitted).

#### C. Merits of Argument

##### *1. Defendants waived a challenge to the trial court’s finding of liability on the duty of candor for their lies to Leo.*

Defendants affirmatively waived an appeal regarding their lies to Leo. Defendants told this Court, in unsuccessfully attempting to circumvent its cross-appeal procedures, that they were *not* appealing from the court’s liability findings in its post-trial opinion. Rather, they contrasted Leo’s appeal, which “challenges

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<sup>6</sup> This trial court finding only pertains to lies made to Leo and disturbs none of the above regarding Kahlon’s lies to SpaceX.

the post-trial liability ruling,” from their appeal, which, “by contrast,” they promised “will center on later-filed briefing and rulings and will address legal questions directed at the equities of granting Leo an 8-figure attorneys’ fees award.” Cross-Appellants’ Opp. to Mot. for Consolidation ¶¶11-12 (cleaned up). Similarly, Defendants didn’t even mention the post-trial opinion in their Notice of Appeal.

Moreover, Defendants never argued the point below and agreed with Leo’s framing of the issue as a classic loyalty claim. The word “candor” did not appear in their post-trial brief, *see* A.629-702, nor did *any* of the authorities they now cite here in challenging the Court’s candor findings. TBC-Br.33-39. They waived the argument. *See Oxbow Carbon*, 202 A.3d at 502 n.77 (“[A]n issue not raised in post-trial briefing has been waived.”).

Despite their own waiver below, Defendants attempt to castigate Leo for supposedly not having argued that Kahlon breached a “duty of candor.” *See* TBC-Br.33. In fact, consistent with the trial court’s findings of fact, Leo argued repeatedly that Defendants’ lies to Leo constituted a disloyal breach of fiduciary duty. Leo devoted multiple sections of its post-trial brief to the point.<sup>7</sup>

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<sup>7</sup> *See* A.592 (Leo’s Post-Trial Brief, section titled “Kahlon and the General Partner’s Lies Independently Breached the Duty of Loyalty”); A.595 (regarding care breach, “Defendants Lied to SpaceX and Then Knowingly Relied on Its Uninformed and Misinformed Views”); *see also* A.561 (Kahlon “lied to all involved”); A.566 (“he lied about it”); A.578 (“[i]t was a series of lies developed

Defendants’ argument that one must effectively use the word “candor,” notwithstanding that they themselves did not, peculiarly elevates form over substance given that there is no independent duty of candor. *E.g., Mindbody*, 332 A.3d at 386 (“The duty of disclosure is not an independent dut[y] but the application in a specific context of the board’s fiduciary duties of care, good faith, and loyalty.” (citation omitted)).

2. *Defendants’ authorities support, rather than undermine, the trial court’s nominal damages award.*

First, Defendants invoke *Dohmen v. Goodman*, 234 A.3d 1161 (Del. 2020), to say there is no affirmative disclosure duty in a transaction with an individual investor and there can be no liability for Kahlon’s lies to Leo as a result. TBC-Br.33-34. That is not the doctrine the trial court relied upon in finding a “duty of candor” breach. Rather, the trial court found that:

When Kahlon chose to speak to Leo Group in these settings, he took on a duty to speak honestly and completely. He could not engage in partial or misleading disclosures. By speaking falsely and partially, Kahlon failed to comply with his duty of candor.

Ex.A\_p.69. As *Dohmen* itself explains, even where a fiduciary does “not have an affirmative duty to disclose . . . , when he cho[oses] to speak he ha[s] to do so

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to manipulate”); A.581 (“Johnsen’s view was an obvious consequence of Kahlon’s lies”); A.589 (“lied to both Plaintiff and SpaceX to ensure that SpaceX’s ire would be directed only at Plaintiff”).

honestly.” 234 A.3d at 1171 (citing *Malone*, 722 A.2d at 10 and *Prairie Cap. III, LP v. Double E Hldg. Corp.*, 132 A.3d 35, 52 (Del. Ch. 2015) (“[I]f a party ... chooses to speak, then it cannot lie.”)). That is the “duty of candor” breach the trial court found. As in *Dohmen*, “this is not a duty to disclose case—it is a breach of the duty of loyalty case for failure to tell the truth.” 234 A.3d at 1175.

Second, contrary to Defendants’ claim that *Dohmen* stands for the proposition that “reliance, causation, and damages” are required to establish liability, TBC-Br.34, *Dohmen* states that a plaintiff needs “to prove reliance and causation to recover the *compensatory damages* sought.” 234 A.3d at 1172 (emphasis added). The trial court did not award compensatory damages here; it awarded nominal damages. Ex.C\_¶2. That award is wholly consistent with *Dohmen*, which explained that “where directors have breached their disclosure duties in a corporate transaction that has in turn caused impairment to the economic or voting rights of stockholders, there must at least be an award of nominal damages.” *Dohmen*, 234 A.3d at 1174 (cleaned up); *id.* at 1168 (the “per se damages rule” covers “nominal damages”).

Kahlon lied to Leo to try to manipulate Leo into agreeing to a mutual withdrawal, obviating Leo’s ability to seek redress. A.422\_p.395:4-12 (Kahlon admitting to doing so); *see also* Ex.A\_p.69 (finding Kahlon’s letter seeking Leo’s withdrawal was not “accurate”); A.423\_p.397:1-11 (Kahlon admitting that parts of

this letter were “bullshit” and “untrue”). Leo did not fall for this ploy.

Nevertheless, Kahlon’s lies were part of his request for action that would impair Leo’s economic and voting rights, therefore justifying an award of nominal damages. Thus, even if Kahlon’s self-interested lies to Leo are evaluated within the narrow, duty-to-disclose regime addressed in *Dohmen*, they support the trial court’s award of nominal damages.

3. *Defendants failed to show the trial court committed clear error in holding that they lied to Leo.*

Apparently recognizing that they are grasping at straws, Defendants attempt to show that Kahlon didn’t *really* lie, but they come nowhere close to showing that the trial court committed clear error. As the trial court found, Kahlon lied to Leo repeatedly for disloyal self-interested reasons.

First, Kahlon testified that he tried to convince Leo to voluntarily withdraw with his “bullshit” communication plan. Ex.A\_p.25-26 (quoting A.422\_p.395:11). The Court reasonably drew the conclusion (and certainly did not clearly err), based on the written evidence available, that Kahlon would have used his admittedly “bullshit” communications plan when he communicated with Leo about a voluntary withdrawal. Ex.A\_p.25-26. That Leo did not *fall* for the lies and “declined to withdraw,” TBC-Br.35, does not detract from the fact that Kahlon lied.

Second, Defendants selectively quote the letter Kahlon sent to Leo—which the trial court found “conflict[ed]” with one he sent SpaceX, “neither of which was accurate.” TBC-Br.35-36 (quoting Ex.A\_p.69). Defendants claim their letter to Leo merely said that retaining Leo would be “materially burdensome” and contend this was accurate because the court had found keeping Leo would result in “significant and adverse delay.” TBC-Br.36. In fact, the letter said that there would be “materially burdensome *compliance obligations on the Partnership under U.S. and/or Chinese regulations.*” Br.20 (emphasis added); *see also* Ex.A\_p.29. That was not true. Kahlon had previously had investors from China and had even used Leo’s investment “to solicit other Chinese investors,” Ex.A\_p.16-17. Defendants also omit that Kahlon admitted under oath that other claims in that letter to Leo were “untrue” and “bullshit.” A.423\_p.397:4-5, 426\_p.409:8-17. The evidence supports the trial court’s finding that Kahlon lied to Leo in the letter.

Third, the Court found that Kahlon lied to Leo about Johnsen’s reaction to the agreed-upon disclosure, by omitting the fact that Johnsen “was both uninformed and misinformed.” Ex.A\_p.69. According to Defendants, the court wrongly found that Johnsen was uninformed and misinformed because it misinterpreted (i) the Side Letter and consequently (ii) whether Leo was permitted to disclose the investment. TBC-Br.37-39. This is not clear error and does not

follow for multiple reasons. For starters, Kahlon chose not to tell Johnsen about the Side Letter's existence; Johnsen first learned about it during his deposition in this litigation. A.368-69\_p.180:19-181:23. The Side Letter's existence, and the parties' agreement on a specific public disclosure, was plainly material. That is why Kahlon blamed Leo for the disclosure. Ex.A.\_p.24 ("For Kahlon, setting up Leo Group to take the blame was part of the plan. He wanted to preserve his relationship with SpaceX.").

Defendants do not directly appeal the trial court's holding that Defendants' interpretation was "so unreasonable as to be frivolous." A.886-87\_¶6. Nevertheless, Defendants revive their argument that a disclosure of content from Side Letter Exhibit A could be made to the extent such disclosure was required by law *and* that the requirements of Partnership Agreement Section 7.12(a) were also satisfied (their so-called "Advanced Written Notice Requirement" and the "Cooperate to Minimize Requirement"). TBC-Br.37. But the Side Letter says the opposite: "Notwithstanding *anything* to the contrary in Section 7.12(a) of the Partnership Agreement, to the extent the Investor is required by law to do so, the Investor may disclose the information described in Exhibit A without the consent of the General Partner and without delivering [an opinion of counsel letter]." A.723\_§2(a) (emphasis added). As the trial court rightly held, LPA Section 7.12(a) has nothing to say about the required disclosure to the Shenzhen Stock

Exchange permitted by Exhibit A. LPA Section 2(c), which Defendants twist for their purposes, in fact confirms the only plain reading of the contract. It says that LPA Section 7.12(a) will continue to apply “except as expressly modified by this Letter Agreement,” A.723, and (of course) the Letter Agreement expressly permitted Leo to disclose the information in Exhibit A. LPA Section 7.12(a) would apply to any *other* disclosures of confidential information Leo wished to make.

Defendants’ post-hoc interpretation also makes no sense for several reasons. The parties negotiated a specific disclosure for a reason: to have certainty about what Leo would state publicly. This was necessary not just for clarity but also because (as both sides’ experts agreed), the disclosure would need to be made within two trading days. *See* A.505\_p.613:13-21; A.468\_p.465:20-24. Defendants do not and cannot explain why the parties would spend days hammering out a specific disclosure, agree that Leo could make that agreed “legally required” disclosure to the Shenzhen Stock Exchange, and still require Leo to provide additional “advanced written notice” beyond the Side Letter, let alone spend time seeking to minimize what was legally required.

Kahlon, in his self-interest, testified that he did not believe the Side Letter permitted Leo to disclose the information it expressly permitted them to disclose. *See* TBC-Br.39. As the Court of Chancery found, Kahlon repeatedly gave non-

credible testimony and admitted to repeatedly lying in his self-interest. Ex.B\_p.5.

To the extent he did not understand the parties' agreements and then acted on his misbelief, that is gross negligence.

## II. The Court of Chancery Was Well Within Its Discretion in Awarding Leo Its Attorneys' Fees.

### A. Question Presented

Whether the trial court was within its discretion in determining that Defendant's pre-litigation conduct warranted fee-shifting.

### B. Scope of Review

This Court reviews awards of attorneys' fees for "abuse of discretion." *Saliba*, 13 A.3d at 758; *accord Kaung v. Cole Nat'l Corp.*, 884 A.2d 500, 506 (Del. 2005) ("Absent a clear abuse of discretion, we will not reverse the Court of Chancery's award."). The Court "do[es] not substitute [its] own notions of what is right for those of the trial judge if that judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness." *Saliba*, 13 A.3d at 758.

### C. Merits of Argument

The "Court of Chancery has broad discretion to fashion equitable relief." *Rsrvs. Dev. LLC v. Severn Sav. Bank, FSB*, 961 A.2d 521, 525 (Del. 2008). That includes whether to award attorneys' fees. *Saliba*, 13 A.3d at 758. The trial court carefully considered Defendants' pre-litigation conduct and was well within its discretion in awarding Leo fees and expenses. *See Ex.C.* The trial court's fee award should be affirmed.

1. *Saliba provides discretion to trial courts to award fees and costs where there are nominal damages for a fiduciary breach.*

*Saliba* is on all fours. There, like here, the trial court: found a breach of a fiduciary duty but ruled against plaintiff on other of its claims; determined that there were no actual damages from the breach it found; and granted undifferentiated attorneys' fees because "[t]hose who violated their fiduciary obligations and were the cause of this litigation are the parties who properly should bear the fees and costs made necessary solely by reason of their faithless conduct." *Saliba v. William Penn P'ship*, 2010 WL 1641139, at \*1 (Del Ch. Apr. 12, 2010), *aff'd* 13 A.3d 749 (Del. 2011).

On appeal, this Court affirmed, concluding that the Chancellor's "decision was neither arbitrary nor capricious" as the plaintiffs "would have been penalized for bringing a successful claim against the [defendants] for breach of their fiduciary duty." *Saliba*, 13 A.3d at 759. This Court recognized the Court of Chancery's "broad discretion in fashioning an equitable remedy" related to fee-shifting based on the circumstances of the case. *Id.*; *accord Rsrvs. Dev. LLC*, 961 A.2d at 525 (same); *Manti Hldgs., LLC v. Authentix Acq. Co.*, 261 A.3d 1199, 1229 (Del. 2021) (same); *see also In re Del. Pub. Schs. Litig.*, 312 A.3d 703, 716 n.53 (Del. 2024) (stating that Delaware courts may deviate from the American Rule under special circumstances such as "where the underlying (pre-litigation) conduct of the losing party was so egregious as to justify an award of attorneys'

fees as an element of damages” (citation omitted)); *In re Nine Sys. Corp. S’holders Litig.*, 2015 WL 2265669, at \*2 (Del. Ch. May 7, 2015) (“In awarding fees, whether as a proxy for unquantifiable damages or as a traditional fee award, Delaware courts have considered a need ‘to discourage outright acts of disloyalty’ and to avoid penalizing plaintiffs ‘for bringing a successful claim against the [defendants] for breach of their fiduciary duty of loyalty.’” (quoting *Saliba*, 13 A.3d at 759)); *Sorrento Therapeutics, Inc. v. Mack*, 2025 WL 2172268, at \*18 (Del. Ch. July 31, 2025) (same).

The trial court followed *Saliba* and appropriately exercised its discretion here. *See infra* Cross-Appeal Opp. §II.C.2. In the face of that, Defendants spend the bulk of their fees argument attacking a strawman. They frame the issue as whether the court’s award fits into five enumerated “exceptions to the American Rule”—none of which the trial court cited—and then showing why none of those exceptions apply. *See* TBC-Br.41-47. This entire seven-page discussion about those unexamined exceptions is irrelevant. Later, Defendants give up the game, grudgingly conceding that Delaware *also* recognizes an exception to the American Rule where “prelitigation conduct r[ises] to egregiousness.” TBC-Br.49 (quoting *Saliba*, 13 A.3d at 751). That was the basis for the Court of Chancery’s award and is dispositive.

Whereas Defendants contend that a court should only shift fees incurred in connection with successful elements of the litigation, TBC-Br.49-50, that is irreconcilable with both the standard of review generally (it is the trial court's assessment of the conduct that is paramount) and *Saliba* itself. As here, the fee-shifting award in *Saliba* arose from a breach of the duty of loyalty. *Saliba*, 2010 WL 1641139, at \*1; *see also* AR.45\_p.20:15-17 (*Saliba* post-trial ruling). And this Court permitted all fees despite that the plaintiff *did not prevail* on most grounds. *See* AR.7-10\_¶¶37-53 (*Saliba* Second Amended Complaint) (showing additional claims for aiding and abetting; conspiracy; and unjust enrichment; and also styled a final claim for rescissory relief); AR.19-20\_p.8-9 (*Saliba* pre-trial order identifying issues to be litigated); *see also* AR.59-60\_p.34:4-35:6 (*Saliba* post-trial ruling, denying “the imposition of a constructive trust and the restitution of income,” “restitution of income from the property,” “the tax benefits received by the Lingos as a result of the transaction,” and “plaintiffs’ claim for unjust enrichment”). Defendants’ proposed bright-line rule is undermined by *Saliba* itself.

And the fact the court awarded nominal damages does not diminish the appropriateness of the fee award either. *See, e.g., Ivize of Milwaukee, LLC v. Complex Litig. Support, LLC*, 2009 WL 1111179, at \*14 (Del. Ch. Apr. 27, 2009) (awarding nominal damages of one dollar plus attorneys’ fees where plaintiff succeeded on claim but failed to prove damages); *SinoMab Bioscience Ltd. v.*

*Immunomedics, Inc.*, 2009 WL 1707891, at \*21 (Del. Ch. June 16, 2009) (same). Indeed, the fact that the damages are nominal may be the *reason* for a fees award. *See Saliba*, 13 A.3d at 759. After Chancellor Chandler denied the *Saliba* plaintiffs' other claims and requested relief, he determined that even a fair sale would have yielded no gain for the plaintiffs and thus awarded no damages. *Id.* at 756. Chancellor Chandler nevertheless awarded plaintiffs "all of their attorneys' fees and the portion of costs that they have paid in connection with the court-appointed expert witnesses." *Saliba*, 2010 WL 1641139, at \*1. And this Court affirmed in full. *Saliba*, 13 A.3d at 759.

2. *The trial court was well within its discretion to award fees given Defendants' conduct.*

*Saliba* effectively dispenses with Defendants' cross-appeal. As the court below appropriately recognized, "[t]his case resembles *Saliba* in that the Opinion found a breach of the duty of loyalty but did not award transaction-specific damages." Ex.C\_¶4. Defendants do not, and cannot, distinguish the present case from the Court's express blessing of the same exercise of discretion in *Saliba*. *See* 13 A.3d at 759.

Defendants argue that "*Saliba* does not justify fee-shifting here," TBC-Br.49, but show no abuse of discretion given the findings of the court below. Contrary to Defendants' assertions that the trial court did not find egregious pre-litigation conduct, *id.*, its opinion was replete with factual findings regarding such

misconduct.<sup>8</sup> On just the breach of the duty of candor findings, the trial court held that:

- Kahlon crafted a “communication plan” to manipulate Plaintiff, which he self-characterized as “bullshit” and which reflected a multitude of lies. Ex.A\_p.25-26.
- Kahlon sent two formal letters regarding Plaintiff’s forced withdrawal containing more lies. Ex.A\_p.28-30, 69.
- Kahlon lied about his critical November 19, 2021 discussion with SpaceX’s Johnsen, which Kahlon depicted “as capricious and concealed that [Johnsen] was both uninformed and misinformed.” Ex.A\_p.69.

Moreover, the trial court found that Kahlon’s conduct during the litigation “reinforces the equities” of a fee-shifting award, Ex.B\_p.5:

- Kahlon “gave often not-credible testimony” at trial, in direct contradiction of his prior deposition testimony. *Id.*
- Kahlon employed an auto-delete setting on his WhatsApp “selectively for certain chats and certain subjects and not others.” A.192.
- Kahlon also used “Signal, an ephemeral messaging service,” with its auto-delete setting on. *Id.*<sup>9</sup>

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<sup>8</sup> That the trial court did not use the word “egregious” is of no moment. *Contra* TBC-Br.50. Its order is clear that this case “resembles *Saliba*” and that the award of fees “is warranted” based on Kahlon’s conduct. Ex.C\_¶4. That is enough, and those findings deserve deference. *Saliba*, 13 A.3d at 758 (reviewing fees award for abuse of discretion).

<sup>9</sup> See *Gatz Props., LLC v. Auriga Cap. Corp.*, 59 A.3d 1206, 1222 (Del. 2012) (affirming Court of Chancery fee award where party “delete[d] relevant documents while litigation was either pending or highly likely” (citation omitted)); *Shawe v. Elting*, 157 A.3d 142, 150, 152 (Del. 2017) (affirming fee award where party

This is the quintessential case in which the trial court’s findings about the egregious conduct in question support a fee award. Given this record, the Court of Chancery certainly did not abuse its discretion and made its judgment “based upon conscience and reason, as opposed to capriciousness or arbitrariness.” *Saliba*, 13 A.3d at 758.

3. *Plaintiff’s fee award is reasonable.*

On the reasonableness of the award, Defendants primarily contend that the award was invalid merely because the trial court did not “even cite Rule 1.5(a)” of the Delaware Lawyers’ Rules of Professional Conduct. TBC-Br.52-53 (citing *Mahani v. Edix Media Grp., Inc.*, 935 A.2d 242, 245 (Del. 2007)). This is form over function, if not complete fluff. This Court has never held that whether a particular citation was included in a written opinion determines whether an exercise of discretion was appropriate.

In any event, the trial court appropriately addressed the only pertinent factor listed in Rule 1.5(a). Defendants admit (at 53 n.8) that they “did not challenge whether Leo’s counsel’s rates or hours expended were appropriate,” which covers every Rule 1.5(a) factor but factor (4), so there was no need for the court to mention them. As for factor (4), the court analyzed “the amount involved and the

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engaged in spoliation even when some of the deleted documents were eventually recovered).

results obtained,” contrary to Defendants’ pedantic assertion to the contrary. That is precisely what it was considering when it rejected Defendants’ push for a bright-line rule that fees cannot be awarded for the entirety of counsel’s work where a party prevails on one claim or that such fees are disproportionate to a nominal-damages award. Ex.C\_¶¶4-5 (noting that, “as in *Saliba*,” “Leo Group received only \$1 as a nominal award” and that, “as *Saliba* itself shows,” “fee-shifting for the case as a whole can be warranted even though a plaintiff only succeeds on one of several claims and cannot show damages”). As the court below recognized, this Court in *Saliba* expressly granted undifferentiated fees in a case where plaintiffs “were left without a typical damages award,” *Saliba*, 13 A.3d at 759, *i.e.*, an award no different than Leo’s nominal damages.

And, as the trial court found, there is no neat dividing line to draw between the various claims, even were it appropriate to do so. “Kahlon’s lies permeated the case.” Ex.C\_¶5. He lied repeatedly. Ex.A\_p.23-24, 69. And each of these lies were at the foundation of the claims and issues at trial. In other words, the trial court did not abuse its discretion in awarding fees for the case as a whole because all of the claims and issues litigated were infiltrated by Kahlon’s dishonest actions.

Thus, the trial court *did* consider “the amount involved and the results obtained,” so Defendants’ grasp for a procedural or legal error fails.

## CONCLUSION

For the foregoing reasons and those stated in Leo's opening brief, the Court should hold (1) that Defendants breached their fiduciary duties and failed to show their actions were entirely fair, and (2) that Defendants breached the forum-selection clause and jury-waiver provisions of the LPA. Additionally, for the reasons stated above, the Court should reject Defendants' cross-appeal and hold (1) that the Court of Chancery did not err in finding Defendants breached the duty of loyalty for lying to Leo, and (2) that the Court of Chancery did not abuse its discretion in awarding fees and costs.

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Dated: January 20, 2026

**Multi-Case Filing Detail:** The document above has been filed and/or served into multiple cases, see the details below including the case number and name.

## Transaction Details

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**Court:** DE Supreme Court

**Document Type:** Reply brief on appeal/answering on cross-appeal

**Transaction ID:** 78236232

**Document Title:** Appellant's Reply Brief on Appeal and Cross-Appellee's Answering Brief on Cross-Appeal. (eserved) (rl)

**Submitted Date & Time:** Jan 20 2026 4:59PM

## Case Details

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Case Number	Case Name
415,2025	Leo Investments Hong Kong Limited v. Tomales Bay Capital Anduril III, L.P., et al.
428,2025	Tomales Bay Capital Anduril III, L.P., et al. v. Leo Investments Hong Kong Limited