



IN THE  
**Supreme Court of the State of Delaware**

LEO INVESTMENTS HONG KONG  
LIMITED,

Plaintiff Below, Appellant/  
Cross-Appellee,

v.

TOMALES BAY CAPITAL  
ANDURIL III, L.P., TOMALES BAY  
CAPITAL ANDURIL III GP, LLC, and  
IQBALJIT KAHLON,

Defendants Below, Appellees/  
Cross-Appellants.

CONSOLIDATED

No. 415, 2025

No. 428, 2025

Court Below:

Court of Chancery of the  
State of Delaware

C.A. No. 2022-0175-JTL

**APPELLEES/CROSS-APPELLANTS’  
REPLY BRIEF ON CROSS-APPEAL**

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## INTRODUCTION

Leo's suit failed in almost every respect. The trial court held that Defendants did not violate the LPA, their duty of care, or their duty of loyalty by removing Leo from the Fund. In only one marginal aspect did Leo prevail: the court concluded that Iqbaljit Kahlon spoke "falsely and partially" to Leo three times, thereby violating his "duty of candor." Even then, the court held that Kahlon's statements caused Leo no harm, warranting only \$1 in nominal damages. Yet the court proceeded to award Leo nearly \$16 million in attorney's fees—its *entire* requested amount. This Court should reject that extraordinary outcome, which is legally infirm, is unsupported by the record, and would have far-reaching consequences for Delaware jurisprudence if upheld.

Leo's brief is largely non-responsive. After a meritless waiver argument, it contends that it proved the antecedent "duty of candor" liability. But precedent requires impairment to the beneficiary's rights and material misrepresentations, both absent here. As for fees, Leo goes all-in on *William Penn Partnership v. Saliba*, 13 A.3d 749 (Del. 2011), claiming that Kahlon's prelitigation conduct justifies fee-shifting under that case. *Saliba* is materially distinguishable, however, and in any event, Leo—like the trial court—fails to identify prelitigation conduct sufficiently egregious to warrant a fee award. Nor does Leo credibly defend the trial court's failure to tailor Leo's award to the miniscule result that Leo obtained. Instead, Leo appeals again to *Saliba*, which did not address that issue and involved substantially different circumstances regardless.

## ARGUMENT

### **I. THE COURT OF CHANCERY ERRED IN HOLDING THAT KAHLON BREACHED HIS “DUTY OF CANDOR.”**

#### **A. Defendants Did Not Waive This Argument.**

Defendants have not “waived” their challenge to the court’s “duty of candor” ruling. Response.Br.29. First, Defendants’ notice of appeal stated that Defendants were appealing the two fee orders and “*any and all orders or rulings antecedent and ancillary thereto.*” Dkt.1 (emphasis added). The Post-Trial Opinion is “antecedent” to the fee orders, which awarded fees because “Kahlon breached his duty of candor” and specifically cited the Post-Trial Opinion. Ex. C at 2-3 (citing Op.25-26). As Defendants’ notice of appeal reflects, their fee award challenge encompasses a challenge to the underlying liability ruling.

Second, Leo contends that Defendants “never argued ... below” that Kahlon did not violate the “duty of candor.” Response.Br.30. But as Leo does not dispute, *nobody* raised the “duty of candor” until it appeared *sua sponte* in the trial court’s Post-Trial Opinion. Until then, the word “candor” appeared in the record literally *once*—in a footnote in Leo’s pre-trial brief concerning its breach-of-contract claim. *See* Ct.Chancery.Dkt.192 at 30 n.14. Leo’s briefs did not even cite a single case that the court included in its “duty of candor” ruling. Leo can hardly criticize Defendants for “never argu[ing]” the “duty of candor” below or not mentioning “candor” in its post-trial brief when Leo did the same.

Last, Leo argues that Defendants “told this Court ... that they were *not* appealing from the court’s liability findings.” Response.Br.23-24. That is untrue: Defendants said their appeal would “center on” the propriety of “granting Leo an 8-figure attorneys’ fees award based on an adjudication that Leo was not meaningfully harmed.” Dkt.13 at 6. Like Defendants’ notice of appeal, that statement encompassed a challenge to the “adjudication” underlying the fee award—*i.e.*, the “duty of candor” ruling. Leo also cites no authority holding that a statement in a motion opposition narrows the scope of appellate issues.

All of Leo’s arguments, moreover, ignore this Court’s longstanding policy that “de-emphasizes the technical procedural aspects of appeals and stresses the importance of reaching and deciding the substantive merits of appeals whenever possible.” *State Pers. Comm’n v. Howard*, 420 A.2d 135, 137 (Del. 1980). Additionally, where—as here—“the trial court has addressed in its decision the issues raised on appeal, the arguments on appeal are not waived.” *In re Tesla, Inc. Deriv. Litig.*, \_\_\_ A.3d \_\_\_, 2025 WL 3689114, at \*10 (Del. Dec. 19, 2025). Finally, Leo does not claim prejudice from this Court’s addressing the “duty of candor” ruling, much less the “substantial[.]” prejudice necessary for waiver. *Howard*, 420 A.2d at 137. Nor could it, given its brief defending that ruling and responding to Defendants’ arguments. *See, e.g., Silvious v. Conley*, 775 A.2d 1041, 1042 (Del. 2001); *Weston v. State*, 554 A.2d 1119, 1122 (Del. 1989).

**B. The Court Erred In Holding that Kahlon Breached His “Duty of Candor.”**

1. Leo does not dispute that this Court has deemed the “duty of candor” a “confusing,” “imprecise,” and “unhelpful” concept. *See* TBC.Br.33. Nor does Leo contend that Defendants breached the “duty of candor” as this Court has understood it, *i.e.*, a fiduciary’s “duty to disclose ... all material information” when it “seeks shareholder action” by “a large number of stockholders.” *Stroud v. Grace*, 606 A.2d 75, 84 (Del. 1992); *Dohmen v. Goodman*, 234 A.3d 1161, 1168, 1171 (Del. 2020).

Instead, citing *Dohmen*, Leo asserts that this is “not a duty to disclose case” but a “breach of the duty of loyalty case for failure to tell the truth.” Response.Br.32. But Leo ignores that even the trial court held that “[w]hen a beneficiary who communicated directly with the fiduciary seeks to recover damages, the beneficiary must prove (1) a material misrepresentation or omission, (2) reliance, and (3) causally related damages.” Op.68. Yet the court indisputably found that Leo failed to prove reliance or causation. Op.69.

Leo’s answer is that because the court only awarded nominal damages, it did not need to prove any other elements in light of the “per se damages rule.” Response.Br.32. But *Dohmen* held that even when a party seeks merely “nominal damages,” it is “excuse[d]” from “proof of reliance, causation, and damages” only “if there is impairment of economic or voting rights” due to the purportedly dishonest communication. 234 A.3d at 1174; *see also id.* (“per se damages” theory applies “only

when the breach of the duty of disclosure ‘caused impairment to the economic or voting rights of stockholders’” (quoting *J.P. Morgan Chase & Co. S’holder Litig.*, 906 A.2d 766, 773 (Del. 2006)); *id.* at 1172 (holding that “the per se damages rule is limited to nominal damages, and *only in specific circumstances*” (emphasis added)).

Here, Kahlon’s purported “lies” unquestionably did not “cause[] impairment to the economic or voting rights” of Leo. Indeed, the trial court found that Leo “failed ... to prove ... *any* causally related harm.” Op.69 (emphasis added). Leo knows it does not satisfy this requirement, because it argues only that “Kahlon’s lies were part of his request for action that *would impair* Leo’s economic and voting rights.” Response.Br.33 (emphasis added). But “would impair” is not the same as “caused impairment to.” Leo’s telling choice of language confirms that, even under Leo’s argument, it has not met its burden.

2. Regardless, Leo also failed to demonstrate that any of the three purported “lies” that the trial court identified constitutes a “material misrepresentation or omission.” Op.69; *Dohmen*, 234 A.3d at 1168 (holding that a “breach” of the “duty of disclosure” requires that the “alleged omission or misrepresentation [be] material”). Leo does not dispute that the trial court itself never conducted a materiality analysis. And Leo’s attempts to backfill the trial court’s three sentences of reasoning are unavailing.

Kahlon's "communication plan." Leo does not contest that the "communication plan" that Kahlon formulated consisted solely of messages from Kahlon to Hussain. Like the trial court, every example that Leo invokes to show that the "plan" was "riddled with lies" is a quotation from Kahlon to Hussain. See Response.Br.26-27 (quoting Op.26). Leo does not identify any aspect of the "plan" communicated by Kahlon (or anyone) to Leo. Indeed, Steven Zhang, Leo's principal witness, never testified that Kahlon said anything to him connected to the "plan."

Apparently recognizing this flaw, Leo argues that "Kahlon testified that he tried to convince Leo to voluntarily withdraw with his 'bullshit' communication plan." Response.Br.33 (citing Op.25-26). But the cited testimony does not support Leo's statement. Kahlon testified that the messages were "basically bullshit written to make [Leo] feel better." A422 (quoting Tr.395:10-11). That statement comprises Kahlon's description of his messages to Hussain; it does not show that Kahlon actually communicated those sentiments to Leo.

Leo is thus forced to assert that the court "reasonably drew the conclusion" that "Kahlon *would have used*" the plan when he spoke with Leo. Response.Br.33 (emphasis added). That is a tacit admission that Kahlon *did not* use the plan with Leo. Regardless, such a logical leap, based only on statements between Kahlon and Hussein, goes beyond "reasonable inferences from established facts" and into forbidden "speculation or conjecture." *Gannett Co. v. Kanaga*, 750 A.2d 1174, 1188 (Del. 2000).

In any event, anything that Kahlon might have communicated to Leo from the “plan” was self-evidently not material, because Leo did not change its course of conduct based on Kahlon’s communications. Leo admits as much, responding only that the fact “that Leo ... ‘declined to withdraw’ does not detract from the fact that Kahlon lied.” Response.Br.33. But even if “Kahlon lied,” Leo must show that the “lie” was material. Leo does not, and cannot, do so.

“Conflicting accounts” to SpaceX and Leo. The trial court also found a breach of the “duty of candor” because “Kahlon sent letters to Leo Group and SpaceX that contained conflicting accounts, neither of which was accurate.” Op.69. Yet Leo does not dispute that, because Kahlon owed no fiduciary duty to SpaceX, Kahlon’s letter to SpaceX is irrelevant, eliminating the court’s “conflicting accounts” rationale.

At any rate, Kahlon’s letter to Leo was not materially inaccurate. Leo contends that the letter stated that Defendants had concluded that Leo’s participation “would impose materially burdensome compliance obligations on the Partnership under U.S. and/or Chinese regulations,” which was “not true” because Kahlon “previously had investors from China” and used Leo’s investment “to solicit other Chinese investors.” Response.Br.34. But Defendants were not concerned about compliance issues involving “previous” or “other” Chinese investors; the problem was *this* Chinese investor. As just one example, SpaceX’s Johnsen told Kahlon he was concerned that media coverage of Leo’s investment—triggered by Leo’s media campaign, and

generating articles stating that Leo “is planning to build rockets with Musk,” TBC.Br.10-12—would trigger regulatory scrutiny by the Committee on Foreign Investment in the United States (“CFIUS”). Op.23. CFIUS inquiries into SpaceX and its investors—which Johnsen testified are “a negative,” A373 (Tr.197:16-198:2)—readily qualify as “materially burdensome compliance obligations.”

Leo alludes to “other claims in that letter” that were false. Response.Br.34. But its citations identify only one “claim[]”: Defendants’ statement that they “look forward to finding opportunities in the future to work together,” A868, which was purportedly untrue because Kahlon did not intend to work with Leo again. Such a “general, non-specific statement of optimism or hope” is “is too vague to be actionable.” *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1427-28 (3d Cir. 1997); *see also, e.g., BAE Sys. N. Am. Inc. v. Lockheed Martin Corp.*, 2004 WL 1739522, at \*7 (Del. Ch. Aug. 3, 2004) (“opinions or predictions about the future” not actionable); *Lain v. Evans*, 123 F.Supp.2d 344, 348 (N.D. Tex. 2000) (statement about “look[ing] forward” to something contains “no concrete factual ... misrepresentation”).

Regardless, Leo does not—and could not—assert that anything in Kahlon’s letter was *materially* false, nor did the trial court so find. Nothing in the letter could have made any difference to Leo’s decision-making, because Leo was being removed regardless. Thus, even if “Kahlon lied to Leo in the letter,” Response.Br.34, no evidence demonstrates that any “lie” was material.

“Depict[ing] Johnsen’s reaction” to Leo. The last “lie” by Kahlon, according to the trial court, is that, “in [his] discussions with Leo Group,” Kahlon “depicted Johnsen’s reaction as capricious and concealed that [Johnsen] was both uninformed and misinformed.” Op.69. Like the trial court, however, Leo never identifies what Kahlon “depict[ed]” to Leo about “Johnsen’s reaction.” Instead, like the trial court, Leo recounts what Kahlon did (or did not) say *to Johnsen*. See Response.Br.26, 35; Op.24-25. But there is no evidence that Kahlon “depicted” *to Leo* Johnsen’s reaction as “capricious” or that he “concealed” that Johnsen was uninformed or misinformed.

On the contrary, Zhang of Leo testified that, even before he spoke with Kahlon, George Yang of Gulf Asia informed him “that SpaceX had become aware that our public announcement concerning this external investment had triggered a lot of media attention and that SpaceX was dissatisfied with that; that SpaceX was, therefore, putting a lot of pressure on to TBC, and TBC had probably decided that they were going to remove us as a limited partner.” A318 (Tr. 51:23-52:5). In other words, Zhang was *told the truth* about Johnsen’s reaction. There is no evidence that Zhang was told otherwise, much less by Kahlon—who, Zhang testified, “didn’t say too much” during their group call following Yang’s message. A321 (Tr. 63:8-9).

Any “depiction” to Leo of Johnsen’s understanding, moreover, could not have been material. First, it could not have made any difference to Leo’s decision-making, because Kahlon had already decided, following his call with Johnsen, to remove Leo

from the Fund. Second, even if Kahlon had told Johnsen *everything* Leo claims Kahlon should have communicated to him, leaving Johnsen no longer “uninformed and misinformed,” *it would have made no difference to Johnsen* and his desire for Leo to be removed. As the trial court found, what compelled Johnsen to demand Leo’s removal was the media coverage of Leo’s investment. *See Op.57*. Even if Kahlon had told Johnsen every detail about the Side Letter and subsequently told Leo he had done so, it would not change the fact that SpaceX still wanted Leo out of the Fund given the media coverage and that, accordingly, Kahlon was removing Leo from the Fund. There was thus nothing material about Kahlon’s supposedly keeping Johnsen “uninformed and misinformed” or “concealing” Johnsen’s reaction from Leo.

Nor, for that matter, did Kahlon keep Johnsen “uninformed and misinformed.” As Leo does not dispute, that characterization turns on the trial court’s erroneous belief that (i) the Side Letter completely trumps LPA §7.12(a), so Leo could make its disclosure without satisfying §7.12(a)’s other pre-conditions for disclosure; and (ii) that Kahlon understood at the time he was communicating with Johnsen that these other pre-conditions for disclosure were inapplicable.<sup>1</sup>

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<sup>1</sup> Leo argues that Defendants “do not directly appeal” the court’s contractual interpretation. Response.Br.35. But the court’s *sua sponte* summary judgment ruling was “antecedent” to the final judgment. Dkt.1.

Leo’s insistence that the Side Letter allowed Leo to make its regulatory disclosure without also complying with the Advanced Written Notice Requirement and the Cooperate to Minimize Requirement of §7.12(a) turns contract interpretation on its head. The Side Letter clearly states that, “[n]otwithstanding anything to the contrary in Section 7.12(a) of” the LPA, and “to the extent ... required by law,” Leo “may disclose the information described in Exhibit A without the consent of the General Partner and without delivering an Opinion of Limited Partner’s Counsel to the General Partner pursuant to Section 7.12(a) of the Partnership Agreement.” A723§2(a). As Defendants explained—and Leo does not dispute—a “notwithstanding anything to the contrary” clause is designed to “override conflicting provisions” of another section, but leave unaffected provisions where “there is no conflict.” *In re Est. of Crist*, 863 A.2d 255, 258 (Del. Ch. 2004), *aff’d*, 879 A.2d 602 (Del. 2005). The Side Letter thus provides that Leo may make its disclosure *without* satisfying one pre-condition of §7.12(a) that applies to such confidential information—namely, the Opinion of Counsel Requirement. That provision “conflict[s]” with §7.12(a), which the “notwithstanding” clause overrides. But *all other aspects* of §7.12(a) remain in force, because “there is no conflict” between them and Side Letter §2(a). That includes the Advanced Written Notice Requirement and the Cooperate to Minimize Requirement.

Section 2(c)—adding “[f]or the avoidance of doubt”—confirms this reading. It states that “except as *expressly modified*” by the Side Letter, “the provisions of §7.12(a)

... will continue to apply to [Leo] *in full*.” A723§2(c) (emphases added). Leo argues that the Side Letter “expressly permitted” Leo to disclose the information in Exhibit A. But Leo only quotes part of the relevant sentence: Leo was expressly permitted, to the extent required by law, to “disclose the information described in Exhibit A without the consent of the General Partner and without delivering an Opinion of Limited Partner’s Counsel to the General Partner pursuant to Section 7.12(a) of the Partnership Agreement.” The omitted language—“without the consent of the General Partner and without delivering” an opinion of counsel—identifies the §7.12(a) provisions that were “expressly modified” by the Side Letter, including the Opinion of Counsel Requirement. Nothing in that language, or elsewhere in the Side Letter, “expressly modif[ies]” the other pre-conditions of §7.12(a), including the Advanced Written Notice Requirement and the Cooperate to Minimize Requirement. Even under Leo’s view, those pre-conditions were at most *implicitly* superseded by the Side Letter. But because they were not “expressly modified,” they “apply ... in full.” A723§2(c); *see Holifield v. XRI Inv. Hldgs. LLC*, 304 A.3d 896, 924 (Del. 2023) (looking to the “plain meaning of the [documents’] terms and provisions” for contractual interpretation).

Leo resorts to parol evidence to argue that Defendants’ interpretation “makes no sense” because the parties wanted “to have certainty about what Leo would state publicly.” Response.Br.36. The Side Letter does not reflect that understanding, however. Exhibit A was merely an outline of topics that could be covered in a

regulatory disclosure “to the extent required by law,” and there is no reference to timing.<sup>2</sup> Regardless, an agreement about *what* Leo could say is different from, and serves different purposes than, providing written notice that Leo would be making the disclosure (as the Advanced Written Notice Requirement mandated, for example).

In any event, the record evidence is undisputed that Kahlon, as well as Defendants’ and Leo’s attorneys, all contemporaneously believed that the Section 7.12(a) requirements would apply. TBC.Br.8-9. This was not merely Kahlon’s “self-interest[ed]” testimony. Response.Br.36-37. As such, the court’s implicit ruling that Kahlon purposefully caused Johnsen to be uninformed and misinformed about the Side Letter is plainly erroneous, reinforcing its error in concluding that Kahlon breached his “duty of candor” to Leo.

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<sup>2</sup> Leo contends that “both sides’ experts agreed” that the disclosure “would need to be made within two trading days.” Response.Br.36. Leo mischaracterizes Defendants’ expert, who testified that “two days” was the reporting period only following a “major event,” which was inapplicable to Leo’s joining the Fund. A505-06 (Tr. 612:22-615:4). Additionally, Leo’s expert’s “two days” reference was drawn from the SZSE Listing Rules, which lack the force of law. A496 (Tr. 577:17-24). Most significantly, the Side Letter’s language does not reflect any “two day” requirement, nor is there evidence that the parties considered such a requirement during negotiations.

## II. THE COURT ERRED IN AWARDING ATTORNEYS' FEES TO LEO.

### A. Leo Failed to Prove that Defendants' Conduct Warrants Fee-Shifting.

1. Leo does not dispute that Delaware “recognizes only a limited number of exceptions to the American Rule,” which “are construed narrowly.” *In re Del. Pub. Schs. Litig.*, 312 A.3d 703, 716, 721 (Del. 2024). And it acknowledges that none of the five enumerated exceptions this Court recently identified in *In re Delaware Public Schools* applies here, including that “a party has acted in bad faith in connection with the conduct of the litigation process.” *Id.* at 716; *see* Response.Br.40 (stating that trial court cited “none” of these exceptions).

Instead, Leo places all of its chips on *Saliba*, which, it claims, allows fee-shifting if “prelitigation conduct rises to egregiousness.” Response.Br.40 (brackets omitted); *see also id.* (contending that *Saliba* “was the basis for the [court’s] award”). Leo then asserts that Defendants’ prelitigation actions constituted “egregious conduct” warranting fee-shifting. Response.Br.44. There are multiple problems with this submission.

To begin, as a matter of law, Leo does not, and cannot, explain how egregious prelitigation conduct can justify fee-shifting when this Court has repeatedly held that fee-shifting under the bad-faith exception to the American Rule cannot derive “from conduct that gave rise to the underlying cause of action.” *RBC Cap. Mkts., LLC v. Jervis*, 129 A.3d 816, 877 (Del. 2015); *see also Versata Enters., Inc. v. Selectica, Inc.*, 5 A.3d 586, 607 (Del. 2010) (“[T]he bad faith exception ... ‘does not apply to the

conduct that gives rise to the substantive claim itself.”). Leo does not contend that there is a difference between “bad faith” prelitigation conduct (insufficient to justify fee-shifting, according to this Court) and “egregious” prelitigation conduct (sufficient to justify fee-shifting, according to Leo). The only way to reconcile these competing principles and hold that “egregiousness” in prelitigation conduct can permit fee-shifting, *Saliba*, 13 A.3d at 751, is if the “egregiousness” is *so extraordinary* that it goes *beyond* even bad-faith conduct. *Cf. In re Straight Path Commc’ns Inc. Consol. S’holder Litig.*, 2024 WL 4602914, at \*5 (Del. Ch. Oct. 29, 2024) (requiring “outrageous prelitigation conduct” amounting to a “high level of egregiousness” for fee-shifting based on prelitigation conduct), *aff’d*, 2025 WL 3467090 (Del. Dec. 3, 2025) (TABLE).<sup>3</sup>

But the trial court never even found that Defendants’ prelitigation conduct was egregious, much less so singularly egregious—beyond bad faith—as to justify fee-shifting. In granting Leo’s request for fees, the court simply stated that Kahlon “breached his fiduciary duty of disclosure by lying to his beneficiary,” which “was a disloyal act.” Ex. B at 5. Subsequently, in awarding Leo all of its fees, the court merely stated that Kahlon’s breach “caused harm in the form of this dispute,” and fees were

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<sup>3</sup> That said, it is altogether unclear why prelitigation conduct would warrant any fee-shifting. While bad-faith conduct *during* litigation can increase the opposing party’s fees, warranting fee-shifting, conduct *preceding* litigation is remedied by bringing suit, so fee-shifting based on that conduct essentially nullifies the American Rule.

warranted “so that those who violated their fiduciary obligations and were the cause of this litigation bear the burden of the expenses they imposed.” Ex. C at 3.

In short, the trial court awarded Leo fees not because it identified any egregious conduct, but because Kahlon engaged in conduct subsequently determined to give rise to liability. That cannot be sufficient to shift fees, particularly under this Court’s “narrow” view of exceptions to the American Rule. It is especially inapposite here, where, as Leo does not dispute, the “duty of candor” breach found by the trial court was a diminutive aspect of Leo’s case and decidedly *not* “the cause of this litigation.” *Id.*; *see* TBC.Br.51.

Ignoring all of this, and acknowledging that the trial court never made any findings that Defendants’ prelitigation conduct was “egregious” (or more so) as to justify fee-shifting, Leo nevertheless insists that the court’s “opinion was replete with factual findings” satisfying that standard. Response.Br.42-43 & n.8. But Leo simply restates the three “lies” by Kahlon that formed the basis of the court’s duty of candor ruling. Response.Br.43. Leo does not explain how this conduct—the very same conduct on which liability was based, and on which the trial court barely spilled any ink—rises to “egregiousness,” much less egregiousness *beyond* bad faith that can justify fee-shifting based on prelitigation conduct.

Leo thus also resorts to briefly invoking “Kahlon’s conduct during the litigation.” Response.Br.43. But as noted, Leo *disclaims* fee-shifting based on conduct during

litigation. *See* pp.13-14, *supra*. Regardless, Leo merely cites the same actions that the trial court cited, with just as little reasoning. Defendants explained at length why there is nothing “egregious” (or in bad faith) about that conduct, which consisted of “not-credible testimony”—still unidentified, and still unremarkable—and spoliation—for which the trial court sanctioned both sides, and even still did not grant the rebuttable presumption that Leo requested. *See* TBC.Br.45-47. Leo offers no response whatsoever except to cite two cases involving exceptionally different circumstances (and where, even then, the court did not award 100% of fees).<sup>4</sup>

2. Leo instead relies almost exclusively on *Saliba*. Leo contends that *Saliba* “is on all fours” because, there, the trial court “found a breach of a fiduciary duty but ruled against plaintiff on other of its claims,” found no actual damages, yet granted 100% of attorney’s fees. Response.Br.39. Leo ignores, however, that the breach of fiduciary duty in *Saliba* was at the core of that suit; the “other” claims that the court rejected were marginal, remedial claims (such as “imposition of a constructive trust,” restitution, and unjust enrichment). *See id.* In other words, the *Saliba* plaintiffs were almost entirely *successful*, including on the breach of fiduciary duty claim that gave rise

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<sup>4</sup> *See Shawe v. Elting*, 157 A.3d 142, 144, 152 (Del. 2017) (affirming 33% fee award where party “deleted [41,000] documents from his computer, recklessly failed to safeguard his cell phone, improperly gained access to [opposing party’s] e-mails, and lied multiple times under oath”); *Gatz Props., LLC v. Auriga Cap. Corp.*, 59 A.3d 1206, 1222 (Del. 2012) (affirming 50% fee award where trial court “made specific findings” regarding party’s repeated “bad faith conduct”).

to their suit. By contrast, Leo was almost entirely *unsuccessful*, prevailing only on elements of a “duty of candor” claim peripheral to its suit. Even Leo’s own cited authority awarded fees only after finding the plaintiff prevailed on a claim at “[t]he crux of the litigation.” *Ivize of Milwaukee, LLC v. Compex Litig. Support, LLC*, 2009 WL 1111179, at \*14 (Del. Ch. Apr. 27, 2009). By any measure, Leo’s “duty of candor” claim was not at the “crux” of this suit.<sup>5</sup>

Leo also disregards that Defendants’ conduct does not remotely approach the circumstances found to be sufficiently “egregious” in *Saliba*—nor does Leo seriously argue otherwise. The *Saliba* defendants “manipulated the sales process through misrepresentations and repeated material omissions,” and their actions so “tainted the entire transaction” that they failed entire fairness review. 13 A.3d at 757-59; TBC.Br.48-50. Yet despite proving the transaction was not entirely fair, the *Saliba* plaintiffs “were left without a typical damage award because the Court’s appraisal of the property came in at a value lower than the sale price.” 13 A.3d at 759. Here, Defendants’ conduct did not even trigger entire fairness review, and Defendants satisfied that heightened standard anyway. The only conduct that resulted in any liability were three “lies” by Kahlon—some of which did not involve communications

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<sup>5</sup> Leo’s other cases are distinguishable regardless because the courts awarded fees based on *contractual* provisions. See *Ivize*, 2009 WL 1111179, at \*13-14; *SinoMab Bioscience Ltd. v. Immunomedics, Inc.*, 2009 WL 1707891, at \*17 (Del. Ch. June 16, 2009).

to Leo, and all of which occurred after Leo's removal from the Fund was already a certainty.

*Saliba* has never been extended, by this or any other Court, to circumstances like those here. On the contrary, courts have declined to apply *Saliba* absent “outrageous pre-litigation conduct” that amounts to a “high level of egregiousness,” with the plaintiff also bearing the “burden of persuading the Court that a defendant acted with *scienter* sufficient to warrant a finding of bad faith.” *In re Straight Path*, 2024 WL 4602914, at \*5 (quoting *Ryan v. Tad's Enters., Inc.*, 709 A.2d 682, 706 (Del. Ch. 1996), *aff'd*, 693 A.2d 1082 (Del. 1997)). Again, the trial court here made no such findings, the record does not support them, and Leo itself does not contend otherwise.

Leo is left to invoke the standard of review, claiming that the trial court “did not abuse its discretion.” Response.Br.44. But this Court has not hesitated to reverse fee-shifting rulings. See *In re Del. Pub. Schs. Litig.*, 312 A.3d at 707; *Montgomery Cellular Hldg. Co. v. Dobler*, 880 A.2d 206, 229 (Del. 2005). And as Defendants have explained, and Leo never rebuts, to employ *Saliba* to uphold fee-shifting here—where Defendants' prelitigation conduct was not egregious, much less so egregious as to exceed bad faith; where the trial court made no such findings; and where Leo prevailed only on elements of a “duty of candor” claim marginal to its case—would blow a gaping hole in the American Rule and set a new and ill-advised benchmark in this Court's fee-shifting jurisprudence. TBC.Br.50. This Court should decline that invitation.

**B. Leo Failed to Prove that Defendants' Conduct Warrants Leo's Entire Requested Amount of Nearly \$16 Million in Fees.**

Affirming Leo's entitlement to fees based on *Saliba* would set a bad enough precedent, but upholding the *entire* fee award of *all* of Leo's fees—nearly \$16 million—would fundamentally alter Delaware jurisprudence. If a plaintiff can *lose* nearly the entirety of its case and recover *nothing* except nominal damages, yet obtain *all* of its attorney's fees by invoking the same prelitigation conduct on which it established a miniscule amount of liability, would-be plaintiffs are sure to litigate every last bit of every case, in the hopes of succeeding on just one claim—however tangential—and obtaining all its attorney's fees, thereby justifying its largely pyrrhic campaign. The incentives to continue (or even commence) litigating largely non-meritorious suits will be massively altered, imposing significant costs on courts, parties, witnesses, and others. *See* TBC.Br.56.

Disregarding these concerns, Leo again invokes *Saliba*, where this Court “granted undifferentiated fees.” Response.Br.45. But as Defendants explained, and Leo does not answer, *Saliba* did not address whether some or all of the fees should be awarded. TBC.Br.55. Furthermore, the *Saliba* plaintiff *won* most of its case (including its primary claim), so shifting all the fees could at least be arguably defended on the basis that those fees corresponded to “the costs of litigation arising out of [defendants'] improper prelitigation conduct.” *Saliba*, 13 A.3d at 759. Here, however, Leo *lost* most of its case (including its primary claims), so that rationale does not apply.

Leo also has no credible response to the trial court’s failure to apply the factors in Rule 1.5(a) of the Delaware Lawyers’ Rules of Professional Conduct. TBC.Br.52-53. Leo does not dispute that if the trial court failed to analyze those factors—which Defendants indisputably raised—the award cannot stand. *See Mahani v. Edix Media Grp., Inc.*, 935 A.2d 242, 245 (Del. 2007); *Meyers v. Chatham Cove Ass’n of Unit Owners*, 2025 WL 1744378, at \*4, \*6 (Del. Super. Ct. June 24, 2025) (reversing fee award given failure to assess factors). Leo’s sole rejoinder is that only factor (4) mattered, which the court “analyzed ... 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.” Response.Br.44-45. This tortuous contention fails. Defendants emphasized factor (4) not to “push” for a “bright-line rule” that *no* fees could be awarded, but to argue that any awarded fees had to reflect “the amount involved and the results obtained,” as that factor provides. Yet the trial court did not even mention Rule 1.5(a) or factor (4), much less analyze “the amount involved and the results obtained.”

Leo also does not address, much less distinguish, case law consistently awarding only partial fees commensurate with a party’s success, an approach this Court has expressly approved. *See* TBC.Br.54; *SIGA Techs., Inc. v. PharmAthene, Inc.*, 67 A.3d 330, 353 (Del. 2013) (holding that trial court “properly tailored the award to the bases for liability on which PharmAthene prevailed”). Indeed, Leo’s *own* cited decisions do

the same. *See Shawe*, 157 A.3d at 144 (awarding 33% of fees); *Gatz*, 59 A.3d at 1222 (awarding 50% of fees); *SinoMab*, 2009 WL 1707891, at \*17, \*21 (awarding nominal damages and “fees that relate specifically to th[e] breach of the Non-Competition Agreement”).

Yet no such “tailor[ing]” occurred here. Like the trial court, Leo argues that any tailoring was impossible because ““Kahlon’s lies permeated the case,”” Response.Br.45 (quoting Ex. C at 3). According to Leo, Kahlon “lied repeatedly,” the lies were “at the foundation of the claims and issues at trial,” and “all of the claims and issues litigated were infiltrated by Kahlon’s dishonest actions.” *Id.* But as Defendants have explained, and Leo does not try to refute, these arguments are not credible. The court identified no more than three “lies.” Far from “permeat[ing] the case,” each was discrete, and each occurred *before* litigation. And far from the “foundation” of Defendants’ claims, they pertained only to a “duty of candor” claim peripheral to Leo’s suit and separable from its other claims. It would not be difficult to identify fees incurred relating to Kahlon’s “game plan” texts with Hussain, the letter removing Leo from the Fund, or Kahlon discussing his conversation with Johnsen, because Leo apparently segregated its own bills, making tailoring of fees certainly possible. TBC.Br.57. For the trial court simply to have awarded Leo all its requested fees—nearly 16 million times its one dollar in nominal damages—without requiring any attempt by Leo to tailor them to the results obtained constitutes an abuse of discretion.

## CONCLUSION

The Court should reverse the trial court's holdings that Defendants breached the duty of candor and are entitled to nearly \$16 million in attorneys' fees but affirm the judgment in all other respects.

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Dated: February 2, 2026

**CERTIFICATE OF SERVICE**

I, Eric D. Selden, hereby certify that on February 2, 2026, I caused a true and correct copy of *Appellees/Cross-Appellants' Reply Brief on Cross-Appeal* to be served through File&Serve*Xpress* on the following counsel:

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