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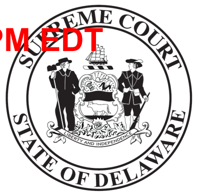

IN THE SUPREME COURT OF THE STATE OF DELAWARE

YOUNG MIN BAN	)	
	)	
Plaintiff Below, Appellant,	)	No.: 19, 2026
	)	
v.	)	Court Below: Court of Chancery
	)	of the State of Delaware
JOSEPH P. MANHEIM,	)	
DELAWARE VALLEY REGIONAL	)	C.A. No. 2022-0768-JTL
CENTER, and WEST 36TH, INC.	)	(Consolidated Lead Case)
	)	
Defendants Below, Appellees.	)	

APPELLANT'S REPLY BRIEF ON APPEAL AND CROSS-APPELLEE'S ANSWERING BRIEF ON CROSS-APPEAL

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SUMMARY OF ARGUMENT AS TO CROSS-APPEAL

1. Denied. The Court of Chancery properly awarded legal fees to Plaintiff under an exception to the American Rule and properly considered pre-litigation conduct in determining whether Plaintiff engaged in bad faith conduct that warranted an award of attorneys' fees[1].

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[1] Consistent with Supreme Court Rule 14(c)(ii), this Summary of Argument only addresses the arguments raised in the Cross-Appeal.

STATEMENT OF FACTS AS TO CROSS-APPEAL

Plaintiff relies upon the Statement of Facts set forth in his Opening Brief which also addresses the issues raised in the Cross-Appeal. Plaintiff only adds the following to give procedural background to the Cross-Appeal. On August 25, 2025, the Court of Chancery issued a letter to the parties advising that Plaintiff could file a motion for an award of fees and expenses in connection with the judgment entered in his favor. On September 18, 2025, Plaintiff filed his motion for attorneys' fees and expenses seeking an award of attorneys' fees, costs, and payments to his experts, Asterion Consulting and Wonjoon Kang. Pursuant to an Order dated November 24, 2025 which is attached to Manheim's Opening Brief as Exhibit A, the Court awarded Ban $253,324.37 in attorneys fees and $6,492.79 in expenses totaling $259,817.16. The Order explained that the award was warranted as a result of Manheim's conduct.

All capitalized, undefined terms hereinafter shall have the meaning ascribed to them in Plaintiff's Opening Brief.

REPLY ARGUMENT ON APPEAL

I. THE COURT OF CHANCERY ERRED BY EXCLUDING THE SUPPLEMENTAL VALUATION WITHOUT APPLYING COLEMAN'S REQUIRED BALANCING TEST

i. The Court of Chancery's Decision To Preclude the Supplemental Valuation Was Not a Credibility Determination.

Manheim's Brief mischaracterizes the Court of Chancery's ruling regarding the Supplemental Valuation as a credibility determination that is entitled to deference. The Court of Chancery excluded the Supplemental Report on procedural timing grounds not due its lack of credibility, holding among other things that "an expert cannot come up with completely new inputs in a supplemental expert report." Exhibit A, Post-Trial Opinion at p. 67. The Court's statement that "the Supplemental Valuation was not credible" (*Id.* at p. 65) was not the basis for its decision to preclude the Supplemental Valuation, and the statement in the Post-Trial Opinion was not preceded or followed by any credibility analysis. The relevant standard of review on appeal is thus whether the Court of Chancery properly precluded the Supplemental Valuation on procedural grounds rather than whether the Court of Chancery properly determined that the Supplemental Valuation was not credible.

Other than the conclusory statement in the Post-Trial Opinion, there is nothing in the record to support Manheim's argument that the Court of Chancery found the Supplemental Valuation not credible or not reliable. The Vice Chancellor reviewed

Plaintiff's spreadsheet cell by cell at trial, asked detailed questions about each specific assumption, received coherent and specific answers, and characterized the exercise as "very helpful." A645. He acknowledged that Scherf "might have permissibly relied on this methodology," and he found that management's projections "meaningfully undervalued DVRC." Exhibit A at p. 66. A court that finds methodology "very helpful," acknowledges the corrective analysis was methodologically sound, and declares that management projections meaningfully undervalued DVRC has not made a negative credibility finding regarding the Supplemental Valuation.

Moreover, the Court of Chancery repeatedly made clear in its Post-Trial Opinion that the basis for its decision to preclude the Supplemental Valuation was procedural due to the use of new "inputs" in a supplemental report rather than any determination of the new inputs' reliability. It specifically held that "[t]he court will not consider the aspects of the Supplemental Report that rely on the new projections" and justified this refusal by citing *IQ Holdings* and *Coleman*, cases that exclusively govern the procedural preclusion of evidence, not the weighing of admitted evidence. Exhibit A at pp. 66-68. Manheim argues that the Court of Chancery's decision to preclude the Supplemental Valuation was based on credibility because the Court of Chancery considered and accepted some aspects of the Supplemental Report. However, the Court of Chancery accepted certain parts of the Supplemental Report

not because it found them more credible than the Supplemental Valuation, but because those parts of the Supplemental Report did not rely on the new projections, as it found that it was procedurally improper to "come up with completely new inputs in a supplemental expert report." Exhibit A at pp. 64-67.

ii. The *Coleman* Balancing Test Was Required and Was Not Applied

As the Court of Chancery's decision was to preclude the Supplemental Valuation as evidence in the case, it erred in not applying the factors identified in *Coleman v. PricewaterhouseCoopers*, 902 A.2d 1102, 1106 (Del. 2006). *Coleman* requires that courts deciding whether to exclude late-produced expert testimony "must balance [their] duty to admit all relevant and material evidence with [their] duty to enforce standards of fairness and the Rules of Court." *Id.* Delaware courts have consistently identified four specific factors: the original scheduling order, whether good cause exists, prejudice to the opposing party, and possible trial delay. *Id.* at 1106-1107 & n.6.

The Post-Trial Opinion's sections addressing the Supplemental Report's exclusion contain zero analysis of any of these factors. Exhibit A at pp. 66-67. The words "good cause," "prejudice," "balancing," and "*Coleman*" do not appear in those sections. This is not a case where the Court of Chancery balanced the factors and reached a conclusion with which Plaintiff disagrees. The Court of Chancery

performed no balancing analysis at all. When a court fails to apply a required legal test, it is reversible legal error.

Manheim argues that Plaintiff waived this argument by not citing to the *Coleman* case in briefing below. However, the preserved issue, which is whether the Supplemental Valuation should be precluded was addressed below, and necessarily implicates the legal standard governing that question. The Court of Chancery even cited *Coleman* when addressing the Supplemental Valuation. *See* Exhibit A at p. 67 (citing *IQ Holdings, Inc. v. Am. Com. Lines Inc*., 2012 WL 3877790 (Del. Ch. Aug. 30, 2012) and *Coleman*). The legal standard governing a preserved issue is not waived because an appellant elaborates on the standard more fully on appeal.

In other words, Plaintiff preserved the issue by arguing that the Court of Chancery should consider the evidence; Plaintiff was not required to preemptively brief the *Coleman* balancing test before the Court of Chancery precluded the evidence in a post-trial opinion. The Court of Chancery should have performed the test once it decided it was going to make the determination as to whether to exclude the Supplemental Projections and Supplemental Valuation. The failure to perform that test as part of its analysis is a reversible error of law.

iii. All Four *Coleman* Factors Supported Admission of the Supplemental Valuation.

Had the trial court applied the *Coleman* factors, every factor would have compelled admission of the Supplemental Valuation. First with regard to the good cause factor, the parties' written agreement expressly authorized supplements to address "testimony given at depositions taken after service of their report that impacts their conclusions." A30-A31. Scherf testified that deposition testimony, specifically Manheim's testimony about the St. James transaction, triggered his revision: "It wasn't until the depositions and getting an understanding of how the model was prepared, as testified by Joseph Manheim, and the fact that there was a transaction and a purchase of the St. James property that effectively locked up $233 million for ten years, indicated to me that the redemption periods for investors was going to be extended; it had to be past 2030." A697.

Scherf further confirmed that the St. James property came on the market in May 2022 before both redemptions making it "known or knowable" at the valuation date but only confirmable through deposition: "Joseph Manheim testified that they were very familiar with that property... And the property went on the market as of May of 2022. So prior to the redemption. So that was a known or knowable transaction that was there at the valuation date." A700.

Plaintiff's own testimony confirmed that his preliminary October 2023 work was incomplete and bore no resemblance to the final projections: "I created this document... sometime in late October. But the document that I created wasn't -- didn't look anything like this, did not have any revenue projections. It had AUM information that was based purely on my assumptions, based on sort of my memory of the breakdown between Chinese and non-Chinese investors... because we didn't have the data at that point in time." A608. The complete projections required deposition data that was unavailable in October 2023: "Going forward beyond 2023, I used Wonjoon Kang's report, which lays out how an investor from 2015, 2016, 2017, 2018, 2019 would be in the DVRC fund until they are allowed to be repaid back by the fund." A603-A604. Delaware law expressly permits expert reliance on projections prepared by a party from source documents. *Zachman v. Real Time Cloud Servs.*, 2020 WL 1522840, at *8 (Del. Ch. Mar. 31, 2020); *Paron Capital Mgmt. v. Crombie*, 2012 WL 214777, at *3 (Del. Ch. Jan. 24, 2012).

As a result of the foregoing, Scherf reasonably explained why he did not initially deviate from management projections in his Original Valuation, but then required adjustments in the Supplemental Valuation, establishing the good cause. He explained that government statistics had always suggested that management's horizon was too short, but he initially deferred to management because there was not yet enough to justify departure. A696-A698; A806-A810. Once he learned through

deposition testimony how the management model had been prepared, and once the St. James transaction confirmed that at least $233 million would remain under management through 2032, he concluded that the short management horizon could no longer be accepted. A696-A701; A709-A711; A749-A750, A806-A810.

Second, with regard to the prejudice factor, Manheim received the Supplemental Report on March 8, 2024, more than two months before trial began on May 14, 2024. He retained Canessa to prepare a full supplemental rebuttal report. A301-A407. He took additional depositions specifically on the AUM projections. A704. Both parties fully addressed the Supplemental Valuation at trial with live expert testimony. The absence of prejudice is confirmed by Manheim's own expert, Canessa, who admitted that, after Scherf made corrections "just a couple days before his deposition," he updated his own work to account for those changes. A1171-A1173. He further admitted that at least one "7/31/2022 Cash" analysis used at trial was "new," not contained in either report, and instead was prepared based on Scherf's deposition testimony. A1210-A1213. Appellees thus did exactly what they complain of: they refined expert analyses after deposition testimony and before trial. Any claim of prejudice is refuted by the comprehensiveness of Manheim's response. Instead, it is Plaintiff who has been greatly prejudiced in that the exclusion of the Supplemental reduced Plaintiff's damages as follows: $24,155,260−$6,898,612=$17,256,648.

Awarding an adjudicated faithless fiduciary a windfall of this magnitude because of a scheduling dispute — without balancing a single *Coleman* factor — is not a proportionate enforcement of procedural rules. "The law does not require certainty in the award of damages where a wrong has been proven and injury established." *Red Sail Easter Ltd. P'rs, L.P. v. Radio City Music Hall Prods., Inc.*, 1992 WL 251380, at *7 (Del. Ch. Sept. 29, 1992). "Once disloyalty has been established, [Delaware remedial] standards require that a fiduciary not profit personally from his conduct." *Thorpe v. CERBCO, Inc.*, 676 A.2d 436, 445 (Del. 1996). With regard to the last two factors, while the original scheduling order provided for an earlier production of expert reports, the parties agreed to allow for supplementation after depositions to account for facts learned during the depositions as more fully set forth in Plaintiff's Original Brief. Lastly, there was no trial delay. Trial proceeded as scheduled on May 14-16, 2024. This factor is undisputed. Accordingly, all four factors required that the Court of Chancery consider the Supplemental Valuation.

iv. The Supplemental Report Contained a Conservative Management-Projection Alternative the Court Never Considered

Manheim's Brief obscures a critical structural feature of the Supplemental Report as referenced in Plaintiff's Original Brief: it contained not one but two complete valuations, one of which considered management projections. The

management-projection alternative (Exhibits 9A and 9C to the Supplemental Report A242, A244) used management's own revenue figures and Scherf's refined expense methodology to produce the following values:

West (June 30, 2022): $37,895,598×1.5%=$568,434

Penfold (July 31, 2022): $38,016,567×30%=$11,404,970

Combined: approximately $12 million

A751-A752. This is nearly double the actual award of $6.9 million, using management's own revenue projections with no disputed inputs. The trial court's categorical exclusion of the Supplemental Report denied the court access to this conservative alternative that Scherf had specifically designed as a fallback. This was not a situation where the court chose between competing analyses, it eliminated both options contained within in the Supplemental Report without applying Coleman, depriving itself of the very information that would have allowed it to award fair compensation while respecting management projection deference.

Scherf testified directly that he provided both precisely because of the deference owed to management projections: "I provided both just for that reason... I just think that that ultimately is a matter for the trier of fact to determine, although I'm very comfortable and consider my opinion to be accurate." A807. He explained: "I recognize that you may have a different point of view. And so I did both just because I think it's appropriate to do both in that situation." A709. The trial court

itself declared during trial that “it's pretty obvious they cashed you out for too little.” A598. It acknowledged the implied valuation based on the redemption price was “well below anything that they eventually came up with.” A597-A598. Yet the Court of Chancery then excluded the only expert analysis that properly quantified “too little,” the Supplemental Valuation. The trial court's own words during trial confirm that the management projections in the Original Valuation it ultimately relied upon in the were insufficient to capture DVRC's true value. The exclusion of the Supplemental Valuation, without *Coleman* balancing, left the court with evidence it knew was inadequate.

Manheim repeatedly says that Scherf made a “wholesale change” in methodology when preparing the valuations in the Supplemental Report. The record does not support that characterization. Scherf used a discounted cash flow method throughout. A706-A708; A719-A720. What changed after discovery was not the valuation method but the duration assumptions driving future Assets Under Management and revenue. As set forth above, Scherf explained why: government statistics had always suggested that management’s horizon was too short, but he initially deferred to management because there was not yet enough to justify departure. A696-A698; A806-A810. Once he learned through deposition testimony how the management model had been prepared, and once the St. James transaction confirmed that at least $233 million would remain under management through 2032,

he concluded that the short management horizon could no longer be accepted. A696-A701; A709-A711; A749-A750, A806-A810.

Even Manheim himself confirmed that the management model itself was built to accommodate different redemption scenarios. He explained that the Excel model contained multiple redemption profiles, including estimates from immigration counsel, and that it was designed so the valuator could input different assumptions and run different amortization curves. A867-A874. That testimony squarely rebuts the notion that revising redemption timing was somehow foreign to the valuation exercise. And the 5% return assumption that Manheim attacks was itself conservative. Scherf testified that 5% was management's own assumption and that, if anything, the actual redeployment environment might have supported a higher rate. A711-A712; see also A620-A621. This Court need not agree with every input in Ban's revised duration model to recognize the core point: the Supplemental Report did not present a new valuation methodology. It presented the same DCF framework with revised duration assumptions grounded in later-developed facts, and was indisputably reliable.

Manheim asks this Court to punish Plaintiff's expert for initially giving Manheim the benefit of the doubt. As Plaintiff testified, management's original projections showed investors exiting the fund by 2027 and the fund winding down in entirety in 2028, a timeline Plaintiff knew was "mathematically impossible, given

the number of visas available." A609. However, because Defendants provided "no explanation as to their methodology or their assumptions," Plaintiff's expert reasonably waited "to listen to at least what the management at DVRC would say regarding that [in depositions] before... updating his model." A609. When fact depositions revealed that management could not justify a 2028 wind-down in light of the 10-year St. James bullet loan, Plaintiff properly exercised the agreed upon right to supplement. Penalizing Plaintiff because his expert waited to hear sworn deposition testimony before overriding management's projections turns the discovery process on its head and was an abuse of discretion.

v. The Exclusion Inverted *Weinberger's* Burden Allocation

Independent of the *Coleman* error, the trial court committed reversible legal error by effectively shifting the burden of proof under entire fairness. *Weinberger v. UOP, Inc*., 457 A.2d 701, 711 (Del. 1983) placed the burden on Manheim to prove both fair price and fair dealing. He never met it. Manheim's own expert admitted at trial: "If the Court were to decide that it's defendants' burden to prove fair value in this case, there is no opinion from the defendants in this case as to fair value." A1213. Manheim set the WestCo price without any analysis, admitting: "**I couldn't really justify any number... I used $100 to kind of create a notional amount**." A818. His book value calculation had no documentary support, and the trial court itself

ruled: "I will proceed on the assumption that there were no documents that supported the book value because none were produced during discovery." A864.

Manheim attempts to characterize the trial court's $6.8 million damages award as a balanced weighing of competing valuations. The trial transcript exposes the fallacy of this narrative. Under the entire fairness standard, Manheim bore the heavy burden of proving a fair price. Yet, Defendants' sole expert, James Canessa, explicitly admitted on cross-examination: **'I have not independently valued it myself'** and confirmed he issued nothing more than "two rebuttal reports." A1212-A1213.

By defaulting to the original management framework, the Court of Chancery ignored Scherf's unrefuted forensic accounting, which revealed that Defendants' 'book value' was a complete fiction. Scherf testified that a reconciliation of the partnership balance sheets proved there was "$8.4 million in distributions that were not made from 2018 at the partnership level." A733-A734. This was cash that existed but was artificially withheld from DVRC.

When asked by the Court of Chancery about this missing cash, Scherf explained exactly where it went: Manheim used it to fund his own illicit transactions, including the "$2 million distribution from DVRC so he can do the St. James transaction" (A735-A736) and the money used to pay Plaintiff his artificially deflated book value. By defaulting to the original management framework, the Court

of Chancery allowed Manheim to hide $8.4 million in missing cash, thereby rewarding the very fiduciary breaches the court was supposed to be remedying.

By procedurally excluding Plaintiff's Supplemental Projections, the Court of Chancery did not choose between two competing valuations; it discarded the only comprehensive, empirically updated model in the record. The Court of Chancery then arbitrarily slashed Plaintiff's remaining baseline valuation using deductions supplied by a defense expert who admitted he never conducted an affirmative valuation. This improperly shifted the burden of proving entire fairness entirely onto the Plaintiff, constituting reversible legal error.

Once the trial court acknowledged that management's projections "meaningfully undervalued DVRC" Exhibit A at p. 66), it was obligated under *Weinberger* to resolve the resulting uncertainty against Manheim, not against Ban. Instead, it awarded damages based on the admittedly deficient projections after excluding the corrective evidence. "[O]nce a breach of duty is established, uncertainties in awarding damages are generally resolved against the wrongdoer." *Thorpe v. CERBCO, Inc.,* 1993 WL 443406, at *12 (Del. Ch. Oct. 29, 1993). The trial court reversed this principle, allowing the faithless fiduciary to benefit from the inadequacy of the baseline projections he created.

vi. The Supplemental Valuation is Supported By the Record And Canessa's Rebuttal Reports Were Consistently Discredited.

Plaintiff submits that the merits and credibility of the experts is not on trial on appeal, as the issue is whether the Court of Chancery erred in not considering the Supplemental Valuation on procedural grounds. However, as set forth above, Manheim in his Responsive Brief repeatedly attempts to discredit the Supplemental Valuation as a "worst case scenario" not supported by the facts, and therefore Plaintiff addresses Manheim's arguments regarding the merits of the Supplemental Valuation and the credibility of Canessa's rebuttal reports.

First, Manheim attempts to characterize Plaintiff's Supplemental Projections, which modeled AUM continuing into the late 2030s, as "facially incredible." Yet, this timeline was expressly validated by Manheim on the witness stand. When asked about the timeline for investors with young dependents to age through the backlog, Manheim conceded: "If someone wants to get their green card and they have a two-year-old, they may hang around to 2036." A996. Manheim's own projections contain worksheets under the "Detailed PW Redemption" tab of his AUM model which track individual investors by priority date, nationality, and dependent child age-out dates with 34% of DVRC investors having age-out dates beyond 2027, confirming that DVRC's management understood and planned for investors with young children who would remain in the program into the 2030s. A1425-A1516.

This is not an outlier scenario the Supplemental Valuation invented, it is a reality DVRC's own records confirm. Manheim further admitted that the Limited Partnership Agreements do not obligate him to redeem investors upon request, but rather grant him the discretion to hold their funds until “the full and complete winding up and liquidation of the Partnership.” A1001. It is a clear abuse of discretion for a trial court to exclude an expert’s timeline as 'not credible' when that exact timeline is corroborated by the sworn testimony of the controlling fiduciary.

Manheim argues that the deposition testimony regarding the 10-year St. James loan did not necessitate Plaintiff’s Supplemental Projections because DVRC could simply create liquidity to redeem investors early. Manheim’s own testimony shatters this argument. Manheim admitted the St. James loan contains a “100 percent prohibition on distributions through equity.” A850. He conceded that attempting to sell the building to generate cash would take up to 12 months and is “subject to a lot of downside risk... it's lower in value today on an equity basis than it was when we bought it.” A852. He further admitted RPLP has made zero applications for any type of financing A946. These deposition revelations confirmed that Manheim had trapped the EB-5 capital in an illiquid, underwater asset in which he owns 2/3 of the equity and the remaining 1/3 by his “confederates” until at least 2032. Modifying the valuation model to reflect this newly discovered illiquidity was the exact purpose of the parties' agreement that allowed for the submission of supplemental reports.

Further, Manheim has a habit of withholding important information that would increase the valuation of DVRC. During trial, he testified that DVRC may seek reimbursement from the limited partnership for any expenses and will do so for litigation expense which could increase the value of DVRC by several million dollars. A1028-A1029. During cross-examination, Manheim's own expert, Canessa, was forced to admit that his treatment for DVRC's legal expenses were factually flawed. When asked if he knew those legal expenses were fully reimbursable to DVRC from the limited partnerships, Canessa confessed: "That was the first that I had heard it, when he [Joseph Manheim] said it on the stand." A1218-A1219. Canessa then conceded that this late-breaking trial revelation would necessitate an adjustment to his own report. A1219.

It is the height of hypocrisy for Appellees to claim Plaintiff's expert should be procedurally barred for updating his model after fact depositions, while their own expert was forced to admit his model required updating based on live trial testimony. The trial court's asymmetrical punishment of Plaintiff's expert for accurately incorporating sworn discovery was a clear abuse of discretion. Manheim himself testified at length about the 10-year, $233.5 million St. James loan maturing in 2032 that generates 4% annual interest to DVRC. A854-A856. He confirmed this was a primary revenue source generating income through the loan's 2032 maturity. Management's projections, which assumed DVRC's revenue would reach zero by

2027, could not account for this reality. The trial court acknowledged the St. James loan as evidence “that DVRC had value far in excess of Penfold's capital account,” (Exhibit A at pp. 52-53), yet simultaneously excluded the expert report that corrected for this very deficiency. Manheim's own testimony confirms the management projections were unreliable, the exact justification for the Supplemental Report.

Conversely, the reliability of the Supplemental Valuation cannot be genuinely disputed on this record. The trial court found Kang “sufficiently qualified to address the subject matter underlying the new projections.” Exhibit A at p. 65. Manheim portrays Kang's analysis as inflated. But Kang testified that his opinion was deliberately conservative, excluding both the five-year I-829 adjudication period and the actual 2.5-year average additional wait his 18 DVRC investors experienced before receiving their capital back from DVRC after filing their I-829 petitions. A473-A475. Far from being an unreliable outlier, Kang's analysis understated the true investment hold period. The Supplemental Valuation, which incorporated Kang's conservative methodology, was therefore more reliable, not less, than management's projections, which assumed complete investor exit by 2027. The Court of Chancery acknowledged that “Scherf might have permissibly relied on this methodology” had it appeared in the Original Report. Exhibit A at p. 66. Defendants' own expert Canessa conceded that management's expense projections were wrong and corrected them himself. A1219-A1220; A1225-A1227. And the court's own

findings, crediting the $2 million Manheim distribution and the $233 million St. James loan as evidence that "DVRC had value far in excess of Penfold's capital account" independently corroborate the Supplemental Report's higher valuation. Exhibit A at pp. 52-53.

The Court of Chancery's adoption of Canessa's $3.4 million downward adjustment for an 'agent tail payment' underscores the abuse of discretion in discarding Plaintiff's comprehensive Supplemental Report. Canessa deducted this massive liability as if it were paid in 2022. However, Scherf, by contrast, correctly deferred this phantom liability to 2028 because the agent had not registered and the funds remained fully within DVRC's control. By accepting Canessa's unverified, immediate deduction of $3.4 million, the trial court permitted Manheim to artificially depress DVRC's value using a hypothetical liability that was never actually paid. This arbitrary deduction alone warrants reversal.

Perhaps most tellingly, Canessa, Manheim's own expert, increased his "corrected" valuation by 96% between his initial rebuttal report ($3.3-3.4M) and his supplemental rebuttal report ($6.7M). A1214-A1216. Manheim cannot credibly attack Scherf for revising his analysis as new information emerged through depositions while his own expert did precisely the same thing. Both experts updated their positions as the evidentiary record developed, which is exactly what the parties' agreement was designed to permit.

Thus, contrary to the framing of Manheim in his Brief, the issue here is not whether the Court properly preferred one valuation over another, it is whether the court knowingly used a valuation framework it found inaccurate because it found that the more accurate valuation had been untimely produced. This was in error and an abuse of discretion, particularly where Manheim's own expert, Canessa's testimony reinforces the unreliability of management's numbers. He conceded management's expense projections were wrong in material respects and corrected them himself. A1219-A1220; A1225-A1227. The court accepted many of those corrections. Exhibit A at pp. 61-67. Thus, the record confirms that management's projections were not sacrosanct; they were already being judicially repaired. However, once the problem became one of the revenue horizon, a far more consequential issue, the Court of Chancery refused to consider the Supplemental Valuation and deferred once again to management projections. This asymmetry in the manner in which the Court reviewed the supplemental reports is reversible error particularly where the Supplemental Valuation is supported by the record.

vii. Manheim's Remaining Arguments Fail

Manheim argues in his Brief that the October 2023 creation date of Plaintiff's projections proves they could not have been based on deposition testimony. However, Manheim confuses preliminary incomplete work with the final Supplemental Projections. As Plaintiff stated at trial, the October 2023 document

"wasn't -- didn't look anything like this, did not have any revenue projections." A607. The complete Supplemental Projections required deposition data about the St. James transaction, the actual AUM figures from Manheim's deposition testimony, and Kang's confirmed methodology — none of which were available in October 2023. A603-A609. The relevant question under the parties' agreement was not whether some precursor existed; it was whether later testimony impacted the expert's conclusions. The trial testimony is clear that it did. Scherf was compelled to alter his analysis after depositions because management's short-run revenue horizon could no longer be accepted at face value. A696-A698.

Manheim conflates the drafting of an initial mathematical model with the evidentiary necessity of deploying it. While Plaintiff may have modeled long-term scenarios earlier, it was Manheim's deposition—admitting that DVRC had just locked $233 million into the St. James transaction via a 10-year bullet loan that served as the evidentiary trigger. This deposition testimony rendered the original management projections (which assumed a 2027 wind-down) demonstrably false. Therefore, replacing the false management projections with the longer-term projections was directly responsive to "testimony given at depositions... that impacts their conclusions," falling squarely within the parties' stipulation that permitted them to supplement their expert reports. Manheim cannot weaponize his own

discovery delays to claim Plaintiff 'pre-created' a model that was, in reality, forced into existence by Appellees' subsequent deposition admissions.

Manheim also argues in his Brief that his expert, Charles Oppenheim's testimony establishes that the Supplemental Valuation's timeline was impossible, and is a "worst-case scenario". This fundamentally misrepresents Oppenheim's actual testimony and the reality of the Supplemental Valuation. Oppenheim admitted at trial that he offered no opinion on DVRC's valuation, "not offering any opinion on the time it takes before an investor would be actually redeemed by DVRC", and no opinion on the validity of Kang's analysis. A1114-A1115. But Oppenheim's testimony actually supports Plaintiff on the central point that matters here: duration.

Manheim's own immigration expert testified that DVRC's China-mainland investors with pre-2019 priority dates would not reach I-829 eligibility until 2037 (A1163-A1164) which is at least a decade out from the year 2027 when Manheim expects all the applicants to have been fully redeemed by DVRC. At minimum, that independently confirms the Court of Chancery's own finding that the 2027 wind-down model "**meaningfully undervalued DVRC**." Oppenheim's own worst-case endpoint of 2035 for visa availability excluded at least eight additional years of post-availability processing time he himself conceded are required: approximately one year to become documentarily qualified, three months to enter the United States, two

years of required residency, and up to five years of I-829 processing. (A1125-A1130). Adding these conceded time periods to Oppenheim's own 2035 endpoint produces: 2035+1+0.25+2+5=2043+.

This is directly consistent with the Supplemental Valuation's timeline. Furthermore, Oppenheim at trial conceded that 17,000 plus additional applicants were totally ignored in his report which would have significantly increased the timeline; thus what Appellees claim to be a “worst-case scenario” timeline from Oppenheim is rather conservative once corrected for these glaring omissions. A1153.

Appellees falsely accuse Plaintiff of ignoring 'warnings' on Oppenheim’s government presentations to fabricate a 'worst-case scenario.' The trial transcript dispels this narrative. Oppenheim was forced to admit on cross-examination that the 2019 presentation Plaintiff actually relied upon, attached as Exhibit G to Oppenheim's own report, did not contain the explicit 'worst-case scenario' warning he later added to his 2020 presentation A1140-A1142. Plaintiff reasonably relied on the government data available at the time to construct a realistic timeline for AUM, a timeline validated by Manheim’s subsequent 10-year lockup of those exact funds in the St. James transaction.

Manheim characterizes Oppenheim as having delivered a definitive rebuttal of the Supplemental Valuation. However, Oppenheim's testimony, properly

understood, supports rather than undermines the general timeframe of the Supplemental Valuation.

Manheim further argues that Plaintiff invited the Court of Chancery's error because Scherf offered the Court "options" or a "menu." That is wrong. A litigant does not forfeit appellate review of the rejection of his primary valuation theory by preserving fallback alternatives in an equitable remedial case. Plaintiff consistently asked the Court of Chancery to adopt the Supplemental Valuation. Providing a more conservative management-revenue alternative was prudent advocacy in a setting where the court might defer to management projections. Plaintiff did not concede that the Court of Chancery could refuse to consider the primary valuation on procedural grounds.

For the reasons set forth above, this Court should reverse the Court of Chancery's exclusion of the Supplemental Valuation and remand for consideration of both Scherf's Ban-projection analysis ($24.2M) and his management-projection alternative (approximately $12M). At minimum, a remand is required with instructions to apply *Coleman* balancing and consider all components of the Supplemental Report including the conservative management-projection alternative that Scherf specifically designed for situations where the court preferred to defer to management figures. A damages award built on projections the trial court itself acknowledged were 'meaningfully undervalued' cannot stand as a matter of law. As

the Court of Chancery itself declared: "**It's pretty obvious they cashed you out for too little.**" The *Coleman* balancing test exists precisely to ensure that procedural concerns do not produce unjust outcomes of this magnitude.

ARGUMENT AS TO CROSS-APPEAL

I. The Court Of Chancery Properly Awarded Legal Fees To Plaintiff Under An Exception To The American Rule And Properly Considered Pre-Litigation Conduct In Determining Whether Manheim Engaged In Bad Faith Conduct That Warranted An Award Of Attorneys' Fees.

A. Questions Presented

Whether the Court of Chancery erred and abused its discretion by awarding Plaintiff legal fees and expenses due to Manheim's bad faith conduct.

This issue was preserved at B639-B658 and B672-B679.

B. Scope/Standard of Review

"This Court reviews the award of fees under exceptions to the American Rule to determine if the Court of Chancery abused its discretion in awarding such fees." *RBC Cap. Mkts., LLC v. Jervis,* 129 A.3d 816, 866 (Del. 2015).

C. Merits of the Argument

i. Plaintiff Did Not Waive The Right To Seek Attorneys' Fees

In his Brief, Manheim argues that Plaintiff waived his right to seek attorneys' fees by not articulating the basis for his claim for fees in the Pre-Trial Order or his Pre-Trial Briefs. However, as the Court of Chancery stated in its August 25, 2025 Letter, there is no one-size-fits all procedure, and a court may consider a fee application after entry of final judgment. *See e.g.*, *In re Rural Metro Corp.*, 88 A.3d 54, 110 (Del. Ch. Mar. 7, 2014), *aff'd sub nom*, *RBC Cap. Markets, LLC v. Jervis*, 129 A.3d 816 (Del. 2015).

The Court of Chancery reiterated this principle in its Order awarding Plaintiff fees, stating, "When the post-trial decision will make factual findings that could support or defeat an expense application, it makes sense to await those findings before making an application." "If the Opinion had not made findings that supported an award of expenses, then Plaintiff would not have had a basis to seek fee shifting. By proceeding as he did, Plaintiff avoided imposing unnecessary expenses on everyone. If Plaintiff had made his arguments in his post-trial briefs, then Mannheim would have had to address them then, even if the court came out differently." The Court of Chancery was well within its discretion to find that Plaintiff properly waited to file an application for fees and expenses until after the Court made factual findings regarding Manheim's conduct, and Manheim cites to no cases which support that the Court of Chancery does not have discretion to award attorneys' fees based upon a request for fees made post-trial.

As set forth herein, facts were established during the course of trial, and the Court of Chancery adopted findings of fact which supported awarding attorneys fees in favor of Plaintiff given Manheim's bad faith and other egregious conduct. Accordingly, Plaintiff appropriately sought an award of fees post-trial. A party is always on notice that attorneys' fees may be awarded at the conclusion of litigation, and an award of fees is within the Court's discretion. The fact that Manheim may have made a strategic decision not to fully contest liability at trial does not change

the standard. The decision regarding what evidence to present at trial was Manheim's own choice, and Manheim could have presented evidence to refute the evidence that was presented at trial establishing his bad faith and egregious conduct. To the extent Manheim chose not to present certain evidence, it was a strategic decision and presumably, Manheim chose not to present any such evidence because he did not have any evidence to contest his liability or refute Plaintiff's evidence that Manheim repeatedly engaged in bad faith conduct.

In sum, the Court of Chancery had discretion to award fees in this case, Plaintiff properly sought recovery of his attorneys' fees after the Court of Chancery found that Manheim had engaged in bad faith conduct, and Plaintiff did not waive his right to recover attorneys' fees.

ii. Delaware Law Permits An Award Of Attorneys' Fees For Pre-Litigation Bad Faith Conduct.

Manheim next argues in his Brief that the Court of Chancery's award of attorneys' fees was in error because it was based upon the pre-litigation conduct of Manheim. It is a general rule that courts in the United States do not award attorney's fees to prevailing parties in litigation. *Kaung v. Cole Nat. Corp.*, 884 A.2d 500, 506 (Del. 2005). This practice, commonly referred to as the "American Rule," is followed by the Delaware courts. *Id.* However, there are recognized exceptions to the American Rule, which invoke equitable principles that have been recognized as a matter of common law. *Id.* The Court in *Kaung* noted that one well-recognized

exception to the American Rule is where the "losing party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'" The purpose of this so-called "bad faith" exception is to "'deter abusive litigation in the future, thereby avoiding harassment and protecting the integrity of the judicial process.'" *Id.* Delaware courts have awarded attorney's fees for bad faith when "parties have unnecessarily prolonged or delayed litigation, falsified records or knowingly asserted frivolous claims." *Id.* There is no single standard of bad faith that justifies an award of attorneys' fees—whether a party's conduct warrants fee shifting under the bad faith exception is a fact-intensive inquiry. *Auriga Capital Corp. v. Gatz Properties*, 40 A.3d 839, 880–81 (Del. Ch. 2012), judgment entered sub nom. *Auriga Capital Corp. v. Gatz Properties, LLC* (Del. Ch. 2012), aff'd, 59 A.3d 1206 (Del. 2012).

However, the bad faith exception to the American Rule for litigation conduct is only one exception to the American Rule that Delaware Courts have recognized. Specifically, as held by the Delaware Supreme Court: "Circumstances where a Vice Chancellor may use his equitable powers to award fees outside of an express "statutory authorization" or a contractual fee-shifting provision include, but are not limited to: (1) the presence of a "common fund created for the benefit of others;" (2) where the judge concludes a litigant brought a case in bad faith or through his bad faith conduct increased the litigation's cost; and (3) cases in which, although a defendant did not misuse the "litigation process in any way, ... the action giving rise

to the suit involved bad faith, fraud, 'conduct that was totally unjustified, or the like' and attorney's fees are considered an appropriate part of damages." *See Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund*, 68 A.3d 665, 686–87 (Del. 2013). Accordingly, courts may also award attorneys fees 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. *See e.g. Arbitrium (Cayman Islands) Handels AG v. Johnston*, 705 A.2d 225, 231 (Del. Ch. 1997), aff'd, 720 A.2d 542 (Del. 1998). Here, not only did Manheim's bad faith conduct during litigation justify an award of attorneys' fees, but also his pre-litigation conduct justified an award of attorneys' fees under these recognized exceptions.

Manheim argues in his Brief that the Court of Chancery erred in awarding fees because pre-litigation conduct cannot support an award of attorneys' fees, citing to *RBC Capital Markets, LLC v. Jervis*, 129 A.3d 816, 877 (Del. 2015). However, Plaintiff respectfully submits that Manheim misunderstands the holding in *RBC Capital Markets*. First, as stated by the Court of Chancery in its Order awarding fees to Plaintiff, *RBC Capital Markets* did not address pre-litigation conduct, but rather discussed bad faith conduct during litigation. Further, even if the Court finds that *RBC Capital Markets* holds that the bad faith exception only applies to conduct during litigation, the Court in *RBC Capital Markets* did not address the third exception identified in *Scion*. This exception applies to cases in which, although a

defendant did not misuse the "litigation process in any way, ... the action giving rise to the suit involved bad faith, fraud, 'conduct that was totally unjustified, or the like' and attorney's fees are considered an appropriate part of damages." Post *RBC Capital Markets*, Delaware Courts continue to recognize this exception to the American Rule. *See e.g. Star Am. Rail HoldCo, LLC v. Cathcart*, 2024 WL 5239938, at *10 (Del. Ch. Dec. 17, 2024). Manheim cites to no cases which hold that this additional "bad faith" exception to the American Rule has been eliminated or which support that the exception should not be applied in this case.

Further, bad faith conduct pre-litigation can also form the basis for an award of attorneys' fees in that the Court of Chancery, in its discretion, can consider pre-litigation conduct in determining whether a defendant defended a lawsuit in bad faith. *Johnston v. Arbitrium (Cayman Islands) Handels AG,* 720 A.2d 542, 546 (Del. 1998). As raised by Plaintiff in his motion for an award of fees, there is ample evidence in the record to support that Manheim defended the lawsuit in bad faith. Specifically, despite the Court's findings in the Penfold Litigation relating to the Fourth LLC Agreement, Manheim continued to rely on WestCo's rights under the Fourth LLC Agreement as his primary defense to liability in this lawsuit. Manheim's frivolous assertions of this defense rather than agreeing to fairly pay Plaintiff for his interests or acknowledging that the Fourth LLC Agreement was implemented unfairly unnecessarily caused and prolonged this litigation. Manheim similarly attempted to

justify his adoption and exercise of the WestCo Call Right despite knowing that the adoption and exercise of the WestCo Call Right was self-interested and in breach of his duties to Plaintiff. These actions caused Plaintiff not only to lose his indirect interest in DVRC, but also required Plaintiff to incur significant fees and costs to refute Manheim's frivolous arguments and defenses in this case.

The Court of Chancery properly recognized that this conduct during the litigation, and also Manheim's pre-litigation conduct described herein supported an award of attorneys' fees pursuant to the above referenced exceptions to the American Rule. It was not an abuse of discretion or error of law for the Court of Chancery to consider this conduct in determining whether to award Plaintiff attorneys' fees.

iii. Manheim's Egregious And Bad Faith Conduct Both Pre-Litigation And During This Litigation Supported An Award Of Attorneys' Fees.

The Court of Chancery also did not abuse its discretion in awarding Plaintiff his attorneys' fees and expenses as the Court of Chancery's findings in its Post-Trial Opinion established that: 1) Manheim's pre-litigation conduct was so egregious as to support an award of fees; 2) Manheim acted in bad faith in connection with DVRC's redemption of Penfold's membership interest and Westco's "repurchase" of Plaintiff's membership interest; and 3) Manheim acted in bad faith subsequent to the Court's rulings in the Penfold Litigation, including by continuing to use and rely

upon the Fourth LLC Agreement and by failing to pay to DVRC the judgment entered in the Penfold Litigation.

As the Court of Chancery properly noted in its Order awarding Plaintiff fees, "not every case of fiduciary wrongdoing calls for an award of expenses. A breach of the duty of care should not justify an expense award." However, "where there has been a breach of the duty of loyalty, as here, potentially harsher rules come into play..." *See William Penn P'ship. v. Saliba*, 13 A.3d 749, 758 (Del. 2011). When a fiduciary "intentionally acts with a purpose other than that of advancing the best interest of the corporation," the fiduciary acts in bad faith. *In re Walt Disney Co. Deriv. Litigation*, 906 A.2d 27, 67 (Del. 2006).

From the standpoint of the core fiduciary principle, the worst form of bad faith involves the fiduciary acting with a subjective intent to harm the beneficiary. *Disney*, 906 A.2d at 64. Thus, as stated by the Court of Chancery in its Order, "[w]hen a fiduciary has acted consciously to harm the beneficiary, then the amounts the injured beneficiary must expend to establish the wrong are necessarily part of the beneficiary's damages. In that setting, a decision to award expenses 'is supported by Delaware law in order to discourage outright acts of disloyalty by fiduciaries.'" (citing *Saliba*, 13 A.3d at 759). Relying on these legal standards and its factual findings, the Court of Chancery appropriately found that "Manheim acted in bad

faith by seeking to harm his beneficiary. His pre-litigation conduct rises to the level sufficient to support an expense award."

The Court of Chancery's decision was well supported by its findings of fact in its Post-Trial Opinion, which established that Manheim engaged in egregious pre-litigation conduct, and acted in bad faith both prior to this litigation and during the course of the litigation. First, the Court of Chancery found that Manheim's adoption of the WestCo Call Right was self-interested, in that *inter alia* the WestCo Call Right gave Manheim the power to acquire a minority stockholder's shares at any time he wanted at a price he determined to be fair market value, but conferred no reciprocal right on minority stockholders, or any procedural protections. *See* Exhibit A at p. 31. As stated by the Court of Chancery, before Manheim adopted the WestCo Call Right, Plaintiff owned WestCo shares that were his personal property that could not be taken from him arbitrarily; that right was taken from him by Manheim's adoption of the WestCo Call Right. *See id.* at p. 40.

The Court of Chancery also found that Manheim engaged in self-interested conduct when he exercised the WestCo call right by *inter alia* arbitrarily determining the buyout price without any analysis and by unilaterally determining the timing of the transaction. *See id.* at p. 34. As set forth above, the Court of Chancery found that this conduct constituted a breach of Manheim's fiduciary duty, and that Manheim engaged in this conduct for the primary purpose of eliminating Plaintiff's indirect

interests in DVRC in retaliation for Plaintiff's criticism of Manheim's self-interested conduct.

Similarly, the Court of Chancery found that Manheim's exercise of the DVRC Redemption Right was "to get rid of Plaintiff", and that his alleged concern regarding Bamford's involvement in Penfold was a pretext to eliminate Plaintiff's interest. *See id.* at p. 50. Manheim intentionally established a board consisting entirely of compromised directors to approve the DVRC Redemption, and did not invite Plaintiff to present an opposing view, even though the DVRC Redemption materially affected Plaintiff. *See id.* at p. 50-51. No one sought approval from either Penfold's investors or the minority investors in WestCo, and as with the WestCo Call Right, the redemption price was established unilaterally by Manheim and did not satisfy any test of procedural or substantive fairness. *See id.* at p. 51.

What rendered Manheim's conduct particularly reprehensible is the fact that the Court of Chancery found that Manheim directed the unlawful adoption of the WestCo Call Right and DVRC Redemption bylaw in response to concerns that Plaintiff might challenge Manheim's reimbursements "for lavish expenses" and his diversion of cash to another entity Manheim controlled. *Id.* at p. 9. Manheim had no good faith basis for enacting these self-interested provisions, but rather did so "to give himself the upper hand" on Plaintiff. *Id.* As further evidence of his especially egregious conduct, it was not until after trial in the Penfold Litigation but before the

entry of judgment in the case, that Manheim adopted and directed the unlawful exercise of the WestCo Call Right to further retaliate against Plaintiff, and protect himself against an adverse decision by the Court of Chancery. *Id.* at pp. 14-16.

Even more egregiously, Manheim disregarded the Court of Chancery's findings in the Penfold Litigation and relied on the Fourth LLC Agreement to exercise the DVRC Redemption Right. The Court in the Penfold Litigation specifically found that Manheim's unilateral implementation of the Fourth LLC Agreement (not just certain provisions) in an effort to eliminate all liability, prospectively and retrospectively for any fiduciary breach was not equitable. Following the Court's issuance of the Memorandum Opinion, Manheim, in bad faith, exercised the DVRC Redemption Right pursuant to the Fourth LLC Agreement and did so without adhering to substantive or procedural fairness requirements. Manheim's conduct thus not only establishes that he lacked any regard for this Court's findings, but also that he knew that the exercise of the DVRC Redemption Right was contrary to the law at the time Manheim caused it to be exercised.

Where defendant fiduciaries engage in self-dealing conduct for their own benefit to the detriment of those to whom their duties run, Courts regularly grant an award of attorneys fees. *See In re Straight Path Commc'ns Inc. Consol. Stockholder Litig.,* 2017-0486-SG, 2024 WL 4602914, at *7 (Del. Ch. Oct. 29, 2024), judgment entered, (Del. Ch. 2024) (citing *Saliba v. William Penn Partnership*, 2010 WL

1641139 (Del. Ch. Apr. 12, 2010), aff'd, 13 A.3d 749 (Del. 2011) *In re Nine Systems Corporation Shareholders Litigation,* 2015 WL 2265669 (Del. Ch. May 7, 2015), and *Cantor Fitzgerald, L.P. v. Cantor,* 2001 WL 536911 (Del. Ch. May 11, 2001)). In each of the *Saliba*, *Nine Systems Corporation*, and *Cantor Fitzgerald* cases, which are summarized in the *Straight Path Commc'ns Inc.* decision, attorneys fees were awarded because the defendant engaged in egregious breaches of its duty of loyalty. Similarly, here, Manheim engaged in or directed a series of transactions, the purposes of which were to benefit himself to the detriment of Plaintiff as an interest holder. Manheim did so knowing that the transactions were self-dealing, and knowing that he was not fairly compensating Plaintiff for his interests; under Delaware law, in such circumstances, an award of attorneys' fees is warranted.

Manheim's bad faith conduct warranting an award of attorneys' fees also continued during this litigation. Despite the Court's findings in the Penfold Litigation, Manheim continued to rely on WestCo's rights under the Fourth LLC Agreement as his primary defense to liability in this lawsuit. Manheim's frivolous assertions of this defense rather than agreeing to fairly pay Plaintiff for his interests or acknowledging that the Fourth LLC Agreement was implemented unfairly unnecessarily caused and prolonged this litigation. Manheim similarly attempted to justify his adoption and exercise of the WestCo Call Right despite knowing that the adoption and exercise of the WestCo Call Right was self-interested and in breach of

his duties to Plaintiff. These actions caused Plaintiff not only to lose his indirect interest in DVRC, but also required Plaintiff to incur significant fees and costs to refute Manheim's frivolous arguments and defenses in this case.

Courts routinely award attorneys' fees where a party asserts frivolous claims or defenses that make the case unduly expensive. As one example, in *Auriga Capital Corp. v. Gatz Properties*, 40 A.3d 839, 881 (Del. Ch. 2012), judgment entered sub nom. *Auriga Capital Corp. v. Gatz Properties, LLC* (Del. Ch. 2012), aff'd, 59 A.3d 1206 (Del. 2012), the Court found an award of attorneys' fees was warranted where the defendant attempted to make a case unduly expensive for minority members to pursue by *inter alia* asserting the frivolous defense that he had acted in reliance on the advice of advisors whose advice he had not even sought on the topic at hand, and in repeating frivolous arguments about the good faith and competent nature of an obviously inadequate and substandard sales process. Manheim's conduct here was even worse. Not only did Manheim assert arguments and defenses that he knew were frivolous, but the Court had already ruled in the Penfold Litigation that certain of his defenses and arguments lacked merit including in relation to the exculpatory clause in the Fourth LLC Agreement, and that his self-interested conduct violated his duties, yet he continued to pursue the defenses in this case.

Manheim's bad faith and lack of regard for the Court of Chancery's rulings is further established by his failure in the Penfold Litigation to pay the judgment to

DVRC. Manheim had the means to pay the judgment to DVRC given that Manheim caused DVRC to make a $2,000,000 distribution to Manheim while the $2,515,809.22 judgment was owing to DVRC. *Id.* at pp. 14, 52-53. However, the judgment remained unpaid throughout the litigation, which further harmed Plaintiff. Manheim repeatedly flouted the rulings and judgments of the Court of Chancery causing Plaintiff significant damage, which damages include the attorneys' fees and expenses he was required to incur in this case.

All of the foregoing established Manheim's egregious conduct and bad faith motive for orchestrating the self-interested WestCo Call Right and DVRC Redemption Right, his bad faith conduct in refusing to fairly compensate Plaintiff, and his bad faith conduct in continuing to pursue frivolous defenses in this lawsuit. Prior to and throughout this lawsuit, Manheim acted in utter disregard for Plaintiff, the Court, and the law, which elevated Manheim's wrongful conduct beyond an ordinary breach of fiduciary duty and warranted an award of attorneys' fees by the Court of Chancery.

Manheim nonetheless argues that the Court of Chancery's conclusion that Manheim acted in bad faith is contradicted by the record. Appellees position cannot be reconciled with the trial court's own findings. First, Manheim argues that he did not act in bad faith in exercising the DVRC Redemption Right and WestCo Call Right because Plaintiff would never meaningfully engage with Manheim on a buyout

of his interests. However, it was not Manheim's unilateral valuation of Plaintiff's interest that alone necessitated the Court of Chancery's finding that Manheim acted in bad faith (though that is part of it), but rather it is the fact that Manheim engaged in various self-dealing transactions and then orchestrated the self-interested WestCo Call Right and DVRC Redemption Right to remove Plaintiff from the entities. In other words, as the Court of Chancery found, Manheim sought to purposely harm Plaintiff by taking control of the entities in retaliation for Plaintiff questioning Manheim's self-dealing conduct. That conduct alone was sufficient to support an award of attorneys' fees.

Further, regardless of whether Plaintiff would be willing to reasonably negotiate the price of his interests in the entities, Manheim controlled whether Plaintiff would be paid for his interest and the amount Plaintiff would be paid given that Manheim had control over the entities. Any disagreement as to price did not prevent Manheim from reasonably compensating Plaintiff for his interest given that he had unilateral control over what price was selected. Manheim repeatedly argues that Plaintiff was unwilling to negotiate. The record shows the opposite. Ban emailed asking to discuss a fair-value buyout. He received no response. A561-A563. Manheim admitted he did not respond. A970-A975. Appellees cannot turn their refusal to engage into a defense to bad faith.

Manheim further contends that his failure to pay the judgment to Plaintiff should not be considered bad faith because the judgment was listed as a receivable asset in DVRC's books. Again, however it was not just that Manheim failed to cause the judgment to be paid, but the fact that Manheim had the means to pay the judgment to DVRC but failed to do so in utter disregard of his obligations. Specifically, Manheim caused DVRC to make a $2,000,000 distribution to Manheim while the $2,515,809.22 judgment was owing to DVRC. The Court's findings supported that Manheim was enriching himself to the detriment of DVRC in order to prevent Plaintiff from recovering—that is quintessential bad faith conduct. It is not the province of this Court to review the Court of Chancery's factual findings de novo despite Manheim's attempts to relitigate the facts of the case in its Brief.

Lastly, Manheim argues that its invocation of the Material Adverse Effect was not pretextual, and that its exercise of the DVRC Redemption Right was not in bad faith. Again, the Court of Chancery found differently. Manheim states that his exercise of the right was based upon the honest concern that Bamford, one of Penfold's limited partners was a British citizen. However, the issue with Manheim's conduct, as found by the Court of Chancery, was not its invocation of the Material Adverse Effect per se, but that the record established that Manheim caused the right to be exercised not because of his concern regarding Bamford but because it wanted to remove Plaintiff. Specifically, the Court of Chancery noted in its Opinion that

although the DVRC Redemption Right applied to Penfold's equity as a whole, the WestCo Board, which exercised the redemption right on behalf of DVRC, did not consider issuing replacement equity to Plaintiff after it exercised the Redemption Right, as it did for Manheim. *See* Exhibit A at p. 15. Further, with regard to the WestCo Call Right, the Court found that Manheim used a unilaterally adopted bylaw to purchase Plaintiff's shares for $100 per share, an amount that Manheim admitted could not be justified as he had done nothing to determine the fair value of the shares. *See id.* at p. 15.

Manheim's trial admissions independently establish the requisite bad faith. He admitted setting the WestCo price arbitrarily with no analysis (A818-A819), never reviewing governing documents before eliminating Ban's shares, and caused a $2 million distribution to himself while the Penfold judgment remained unpaid. Exhibit A at p. 15. These are not good-faith disputes over valuation; they are conscious decisions to harm his beneficiary while enriching himself. *See In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 64 (Del. 2006) (bad faith includes 'subjective intent to harm').

Given all of the foregoing, the Court of the Chancery did not abuse its discretion in awarding attorneys fees as Manheim repeatedly engaged in conduct designed to harm Plaintiff in breach of duties of loyalty owed to Plaintiff. This Court should thus affirm the Court of Chancery's findings that Manheim's egregious and

bad faith conduct warranted an award of attorneys' fees under the exceptions to the American Rule.

CONCLUSION

This appeal presents two independently reversible errors, each compelled by the Court of Chancery's own findings. The exclusion of the Supplemental Valuation without balancing the *Coleman* factors was legal error, as was the subsequent award of damages based on projections the trial court itself found "meaningfully undervalued DVRC" (Exhibit A at pp. 66–67) which inverted the *Weinberger* burden allocation. Conversely, the Fee Order should be affirmed as it is independently supported by Manheim's bad faith conduct in relying on invalidated agreements after the Penfold ruling.

For all the foregoing reasons and those set forth in Plaintiff's Original Brief, this Court should thus reverse the damages award and remand with instructions to (i) apply *Coleman* balancing factors with regard to the admission of the Supplemental Valuation and the Supplemental Report, (ii) consider both valuations contained therein (including the conservative management-projection alternative that produced nearly double the actual award), and (iii) resolve all uncertainties against Manheim under *Weinberger*. The Fee Order should be affirmed.

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Dated: April 24, 2026

CERTIFICATE OF SERVICE

I, Jeffrey S. Cianciulli hereby certify that on April 24, 2026, a true and correct copy of the foregoing Appellant's Reply Brief on Appeal and Cross-Appellee's Answering Brief on Cross-Appeal was electronically filed and served upon the following counsel of record via File and ServeXpress:

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